UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1167
30 October 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1167th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 August 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

ORGANIZATIONAL AND OTHER MATTERS (continued)

Methods of work of the Committee

Programme of work of the Committee

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17799 (E)

The meeting was called to order at 3.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Methods of work of the Committee

1. The CHAIRMAN invited the experts to comment on draft chapter III of the Committee's report to the General Assembly (in-session document with no symbol, in English only) dealing with the Committee's methods of work, which might be reviewed annually under the same chapter.

2. Mr. GARVALOV, agreeing with the principle of such a review, asked whether its purpose was to inform Member States about the Committee's methods of work or to provide them with an analysis of the Committee's own position on its work. Member States would be familiar with the Committee's methods of work and if the intention was to provide an analysis, the Committee should perhaps expand a little on the results it had obtained.

3. As already pointed out by Mr. Aboul-Nasr, the text was silent on the application of article 15. That was certainly a very important question of principle, but the Committee could not be charged with laxity, since it did not have the information needed to take action.

4. There were other weaknesses in the draft: the part dealing with early-warning measures and urgent procedures was too short, and nothing was said about communications transmitted by the Committee through the High Commissioner for Human Rights to the Secretary-General, the General Assembly and the Security Council when very urgent matters arose. There was no reference, moreover, to the evaluation of the early-warning procedures already made by those three authorities; the States parties to the Convention and the States Members of the United Nations were entitled to know the results of that evaluation. The draft also gave no information on coordination between the activities of the Committee and those of other United Nations bodies, in particular the Sub-Commission, although the Secretary-General had issued an appeal on that subject, which had been endorsed by the World Conference on Human Rights at Vienna and reiterated in resolutions of the General Assembly.

5. In paragraph 12, furthermore, the concluding observations were presented as being a collective opinion of the Committee. In fact, that was not always the case and any expert could decide not to join in the consensus on the concluding observations. It would therefore be preferable to omit that description. Paragraph 15 said that some States lacked the political will to comply fully with their reporting obligations. Even if the solution was in the hands of the States themselves, that was a failing on which the Committee had a duty to express its views firmly without, of course, closing the door to dialogue. In that regard, a distinction should be made between delays in reporting and non-submission of an initial report. Even if they had some excuses, the States in question were not, after all, in situations like Somalia or Burundi. He proposed that if the Committee decided to recommend to the General Assembly that it specify by name those States parties which were late in submitting their periodic reports, it should do the same for those which had not even sent their initial reports.

6. The CHAIRMAN suggested that the solution proposed earlier by Mr. Aboul-Nasr concerning reports that were long overdue should be applied also to States which had not submitted an initial report. In view of the fact that their excessive delay in reporting prevented it from discharging its treaty obligations, the Committee would invite them to provide information and take part in the discussion, and would point out to them that, in the absence of any response on their part, it would nevertheless examine their situation in regard to the Convention. If a State, basing itself on the terms of the Convention, objected to such an examination, the Committee would not pursue the matter.

7. Mr. ABOUL-NASR said that article 9 of the Convention was very explicit: the Committee had to work on the basis of the information given by the State party when considering the situation in that State, although it could seek additional information from other sources. Even an examination based on study of the core document could be undertaken only with the State's agreement.

8. Mr. GARVALOV said that if a State party declared that the core document should be considered as a report, the Committee could hardly object, but he doubted whether such a document could give it the information it required for proper consideration of the implementation of the Convention by that State.

9. Mr. van BOVEN said that there was a gap in the Convention since its drafters had not allowed for the case in which States parties might not cooperate with the Committee. The Committee should be creative in filling that gap and seek the information it needed in reports that the States concerned might have submitted to other bodies, such as the International Labour Organization, or under the Covenants or other conventions. It was inadmissible that the Committee should have to forgo consideration of the situation of States parties that had not even sent a single report.

10. Mr. WOLFRUM said that, whatever the difficulties involved, a State party was required to report to the Committee at regular intervals. It was a rule of law, moreover, that those who broke the law must not gain advantage from their omissions. A way therefore had to be found, without condemning the defaulting States, to convince them to enter into a dialogue with the Committee.

11. Mr. RECHETOV observed that a State not submitting an initial report risked becoming the subject of an early-warning procedure. It could be supposed that a State which had neglected to submit such a report had not established the requisite legislative basis to deal with racial discrimination under its criminal law, or the mechanisms for applying the Convention or measures of legal protection against racial discrimination.

12. He would provide written comments on the draft to the secretariat, but wished to point out orally that while reports were often not sent regularly, they were submitted one day or another. That point must not be ignored. However, the Committee should indicate in the document that a large number of States which had ratified the Convention were doing little to apply it; that they were nevertheless required to do so, even if they believed they could say that no racial discrimination existed in their territories; that they should not simply present their constitutions and legislation in their reports, but

should also describe the specific effects of the application of those instruments; and, lastly, that not only the United States, but also France and a number of other States had made reservations which they should be encouraged to withdraw.

13. A very important procedure not mentioned in the document under discussion concerned the communication that a State party could transmit to the Committee when it considered that another State party was not giving effect to the provisions of the Convention (art. 11 of the Convention). The fact that States were not applying that procedure showed how far human rights were politicized.

14. Lastly, paragraph 12 of the document stated that the Committee adopted its concluding observations by consensus. He did not believe that was the case: it adopted them without a vote, but there was nothing in the rules of procedure to the effect that the Committee should adopt its concluding observations by consensus.

15. Mr. SHAHI asked how many countries had not submitted an initial report but only a core document, and how many had submitted neither an initial report nor a core document. He thought, like Mr. Aboul-Nasr and Mr. van Boven, that when a country had submitted a core document, the Committee could consider that document with the help of the information contained in other documents submitted to other treaty bodies. But what was the Committee to do when there was neither an initial report nor a core document?

16. The CHAIRMAN replied that eight States were more than five years late in submitting their initial reports. Other initial reports were also overdue, but by less than five years. The secretariat would ascertain whether any of those States parties had submitted a core document, which constituted the first part of a report.

17. Mr. ABOUL-NASR said that he associated himself with Mr. Rechetov's comments on the document before the Committee. His position was that the Committee could consider a report - whatever its title - from a State party provided that the State party agreed to its examination by the Committee as a report submitted under article 9 of the Convention. The Committee could not oblige but only request a Member State to prepare a report of a particular kind. Another point to be borne in mind was that the Committee was not a court of law. It examined reports, not situations, and could make suggestions and recommendations based on that examination (art. 9, paras. 1 and 2, of the Convention).

18. Furthermore, he wished to draw the attention of the members of the Committee to the last sentence of article 9, paragraph 2, which stated that the Committee's "suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States parties". Had the decisions taken by the Committee, at the current session or previous sessions, been communicated to the States parties? Had their comments been included in the Committee's report to the General Assembly? He did not think so. Lastly, he did not see how not submitting a report might be to the "advantage" of a State party, as suggested by Mr. Wolfrum.

19. Mr. WOLFRUM, answering Mr. Aboul-Nasr, pointed out that if a State party had not submitted an initial report and if, therefore, the Committee concluded that it could not discuss the application of the Convention in the State concerned, that State would find itself in a better position than some other States which had submitted reports and had been criticized by the Committee. In his view, a State which did not comply with article 9 should not escape the Committee's scrutiny on that account.

20. It could not, in fact, be said that the Committee had neglected the obligation to report "comments, if any, from States parties" to the General Assembly as no State had thus far taken the care to formulate such comments.

21. The CHAIRMAN pointed out that, since the drafting of the text in question, the Committee had established the procedure of inviting a State to send representatives to present its report to the Committee and to respond to the members' questions and comments.

22. Mr. de GOUTTES said that, in principle, he was in favour of the document under discussion, which reviewed the achievements of the Committee in regard to methods of work and made those methods transparent for the Committee's partners. It bore the hallmark of the Committee's "prudent boldness", which consisted in remaining faithful to the text of the Convention and its terms of reference, while drawing from the Convention all the strength possible in regard to States' obligations (including the recommendation on sources of information, preventive measures and urgent procedures).

23. Additional mention could be made of complaints from States, as proposed by Mr. Rechetov, and of trust territories, as proposed by Mr. Aboul-Nasr. For his part, he would like the document to include the Committee's 1990 recommendation on the independence of the experts, as well as a reference to the practice of the neutrality of the expert who was a national of the country whose report was being examined. In the section concerning relations with other international bodies, he would like reference to be made to meetings of the Committee with the Sub-Commission.

24. Mr. DIACONU said he hoped that the few pages devoted to the Committee's methods of work would be included in its report to the General Assembly only in 1996: repeating them every year would be a waste of time. The idea of complaints based on article 11 of the Convention was, in his view, out of date. No State had ever availed itself of that possibility and today human rights were no longer a matter of conflict between States, but a concern of the international community as a whole.

25. The Convention required the Committee to work on the basis of the reports submitted by the States parties. What was the Committee to do when a State party had not submitted an initial report? If the State party in question had submitted a core document, that showed a willingness on its part to have its reports considered by at least one treaty body. In that case, the State concerned merely had to be requested to report to the Committee on the Elimination of Racial Discrimination. In the opposite case, the Committee could, for example, ascertain whether the country had reported to other United Nations committees or bodies, or contact the country's delegation at

the General Assembly. The Committee could also submit a separate document, besides the report, to the General Assembly; it would list the countries that had not submitted reports and would be issued as a document of the General Assembly under the relevant agenda item. He did not think, however, that the Committee could consider the implementation of the Convention in any particular country in the absence of a report: that was not within the Committee's terms of reference.

26. Mr. GARVALOV said that, as he understood it, the Committee's report would from now on reproduce only its concluding observations relating to the examination of States' reports, and not the views expressed by States during that examination. That would be a very serious omission, and the Committee should be aware of the fact. He shared the opinion of Mr. de Gouttes concerning the neutrality of the experts, as well as Mr. Diaconu's view that the Committee's report should be brought directly to the attention of the General Assembly, without going through the Third Committee. The best solution, as he had himself suggested earlier, might be to inform the Secretary-General directly of the main points in the Committee's report that required not only urgent action but analysis.

27. Mr. CHIGOVERA said that he wondered how many points - such as those regarding the Committee s methods of work - could be added to the report, and how long it should be. There already appeared to have been some innovations in the terms of reference set forth in article 9 (information from other sources, early-warning measures, urgent procedures, preventive procedures). In his view, the Committee sometimes had to interpret the Convention. It might, therefore, consider the situation in a country that was not fulfilling its reporting obligations under the Convention.

28. He would like the secretariat to prepare a draft text taking account of all the comments that had been made. The Committee could then consider it paragraph by paragraph.

29. Mr. AHMADU observed that reports by Member States were becoming increasingly rare and that some States had thus far not even submitted their initial reports. Moreover, the Committee on the Elimination of Racial Discrimination was not the only body concerned, as other United Nations committees found themselves in the same position. The problem was perhaps partly to be explained by the way in which the Committee considered the reports. It had been reproached, for example, with acting like a criminal court and with interfering in States' internal affairs. There were two ways of proceeding. The Committee could consider requesting the Secretary-General of the United Nations to take sanctions against countries not fulfilling their obligations - for example, preventing them from voting in the General Assembly or from participating in its work. Another solution might be for the Committee to be less demanding and put itself more in the place of the country whose situation was being considered.

30. The CHAIRMAN said that it would be difficult to impose sanctions, and in any event that was not the Committee's role.

31. Mr. WOLFRUM said that the Committee appeared to have largely exhausted the question and it was perhaps time to close the discussion. He would,

however, like the report to the General Assembly to indicate the sources used by the Committee and whether or not reference would be made to documents from non-governmental organizations. That would give States parties and non-governmental organizations an idea of how the Committee worked. Some States might not be reporting on time because they were overburdened. Despite the drawbacks, the submission of a single report to all the treaty bodies was perhaps the solution.

32. Mr. VALENCIA RODRIGUEZ pointed out that, in so far as overdue initial reports were concerned, article 9 of the Convention was clear. In that regard, the Committee was not empowered to change the Convention, but could interpret it when a procedural problem arose. The best course of action under the circumstances was to inform the General Assembly that as from the next session the Committee intended to notify States which had not yet submitted an initial report that, in the absence of such a report, it would consider their situation on the basis of reports submitted by them to other United Nations bodies and on studies prepared by the United Nations services. It was out of the question, however, to refer to documents originating from non-governmental organizations for that purpose. In its report to the General Assembly, the Committee could include a list of the States concerned. As the latter were Members of the United Nations, the General Assembly might adopt a reoslution approving the course of action followed by the Committee.

33. Mr. ABOUL-NASR said that in general he supported the solution proposed by Mr. Valencia Rodríguez and agreed with him that the Committee must avoid using sources other than Member States' reports and United Nations documents for the simple reason that the validity of outside sources was not recognized by all members of the Committee and that some of them were biased. Some members referred to the reports of the United Nations Department of State, but he wondered whether it was appropriate to make use of information provided by one Member States to examine the situation in another.

34. Mention had been made in the discussion of the experts' neutrality. That concept made no sense in the context of the Committee's work. Article 8 of the Convention spoke of "impartiality" and the Committee must apply that criterion.

35. Mr. de GOUTTES agreed that he had not used the right word in speaking of neutrality. It was the idea of impartiality that he had actually had in mind when expressing the wish that the report should mention the practice whereby the expert would not intervene in a discussion devoted to the consideration of the situation in his own country.

36. Mr. RECHETOV, referring to Mr. Wolfrum's comments, said that the Committee was an independent body and that the experts serving on it were appointed in their personal capacity. Some held that, because of their status, the experts must not take part in the consideration of the report of the State of which they were nationals. He did not agree with that view, which to him seemed contrary to the provisions of the Convention. As well as the criterion of impartiality, there was the fact that the experts represented different legal system and civilizations. Their non-participation in the consideration of the report concerning their country would deprive the

Committee of their valuable expertise. As long as the discussion was open, no one could doubt the impartiality of the experts, and it was actually their non-participation in the discussion that might be interpreted as a sign of dependence vis-à-vis their Government.

37. Mr. de GOUTTES, speaking in exercise of the right of reply, said that he did not agree with Mr. Rechetov's interpretation of article 8, paragraph 1. Impartiality was a fundamental obligation that the expert had to show in all circumstances. The principle of the representation of different forms of civilization and different legal systems was, on the other hand, simply a criterion to be taken into account in the election of members of the Committee. Those were two quite distinct concepts.

38. Mr. YUTZIS said he had the impression that the Committee was wasting its time. The discussion would have been more fruitful if each member had submitted his or her proposals in writing and if the report had then been considered paragraph by paragraph. Unless members of the Committee had something new or different to add, or what they wanted to say could not be submitted in writing, he proposed tht the Committee should move on to the next agenda item.

39. Mr. LECHUGA HEVIA said that, while agreeing with the proposal of Mr. Valencia Rodriguez, he wished to point out that the reports submitted by States parties to other treaty bodies - documents on which it was proposed that the Committee should base itself in order to consider the situation in countries that had not submitted initial reports - did not deal directly with the question of racial discrimination and therefore might not be very useful to the Committee.

40. Mrs. ZOU said that the Committee had devoted too much time to exchanges of views on general issues and it would have been more useful to examine the draft text item by item. The comments made by members of the Committee would then have been more focused.

41. The CHAIRMAN said that a new version of the document under consideration would be prepared. If he heard no objection, he would take it that the Committee wished to adjourn the discussion of the text.

42. It was so decided.

Programme of work of the Committee

43. The CHAIRMAN invited the members of the Committee to decide on the programme of work for the next meeting, in view of the fact that the consideration of the reports of Namibia and Venezuela had been postponed until the following afternoon.

44. After a discussion in which Mr. CHIGOVERA, Mr. DIACONU, Mr. WOLFRUM, Mr. GARVALOV, Mr. YUTZIS, Mr. ABOUL-NASR and Mrs. SADIQ ALI took part, Mr. van BOVEN said that he was prepared to present what might be considered as a report on the situation in Bosnia and Herzegovina. Regarding Israel, however, it was inappropriate in his view to consider the application of the Convention in that country without a report containing the specific

information requested by the Committee. The Committee might also consider communications, if the secretariat was ready, or the working paper prepared by the Chairman in connection with the meeting of persons chairing the international human rights treaty bodies.

45. Mr. RECHETOV said that he agreed with Mr. van Boven regarding the consideration of implementation of the Convention in Israel. Bearing in mind the importance of that country and the problems with which it might be confronted in the future, in particular owing to its mono-ethnic character, it would be inadvisable to consider the situation if no report was available and a delegation was not present.

46. Mr. YUTZIS said that, in view of the urgency and complexity of the situation in Burundi, the Committee might request further information from the Special Procedures Branch of the Centre for Human Rights, which was monitoring the situation on a day-to-day basis.

47. Mr. de GOUTTES, supported by Mr. WOLFRUM, pointed out that the High Commissioner for Human Rights had provided up-to-date information on Burundi a week earlier and the Committee had adopted a recommendation concerning that country. However, there was no reason why the Committee should not again contact Mr. Ayala Lasso, as the High Commissioner had himself suggested, to find out the latest developments concerning Burundi.

48. Mr. ABOUL NASR said that the Committee should not consider the report of a State party, even under the urgent procedure, without the State concerned having been informed.

49. Answering a question from Mr. SHAHI, Mr. HUSBANDS (Secretary of the Committee) said that the Committee's recommendation concerning Burundi and the letter accompanying it had been transmitted on the same day as the adoption of the recommendation to the officer-in-charge of the International Instruments Branch for communication to the Assistant Secretary-General for Human Rights and the High Commissioner for Human Rights.

50. Mr. SHAHI said that he did not understand why the Committee could not send a letter directly to the Secretary-General under the urgent procedure, as had been its practice before the institution of the post of High Commissioner for Human Rights.

51. Mr. WOLFRUM noted that, under the terms of article 9 of the Convention, the Committee could communicate directly with the Secretary-General of the United Nations.

52. Mr. GARVALOV said that no reservation of any kind vis-à-vis the High Commissioner for Human Rights or the Assistant Secretary-General for Human Rights must be construed in the fact that the Committee wished to approach the Secretary-General directly.

53. Mr. van BOVEN pointed out that the Secretary-General of the United Nations had a dual function: on the one hand, he was the administrative head of the United Nations Secretariat; and, on the other hand, he had a political role, particularly in regard to activities concerning the

Security Council. The Committee could approach the Secretary-General directly in his political capacity, but when communicating with him as head of the administration, it should go through the appropriate channels. Clearly, with regard to the recommendation on Burundi, the Committee wished to approach the Secretary-General directly in his political capacity.

54. Mr. ABOUL-NASR said that the Secretary-General could not possibly take note of the vast number of communications sent to him every day. It therefore seemed appropriate, in his view, that the Committee should approach him through the Assistant Secretary-General for Human Rights, for example, and no form of censure could be seen in that procedure.

55. The CHAIRMAN said that, at its next meeting, the Committee would therefore consider the situation in Bosnia and Herzegovina, then communications, and lastly the working paper he had prepared in connection with the meeting of persons chairing the international human rights treaty bodies.

56. Mr. SHAHI, supported by Mr. CHIGOVERA, said that for the purpose of adopting its concluding observations after the consideration of a State party's report, the Committee must have the text of those observations in all the working languages, as well as the text of the summary records of the meetings at which the report in question had been considered.

57. The CHAIRMAN pointed out that the summary records of meetings were prepared alternately in English and in French.

The meeting rose at 5.40 p.m.

UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1168
9 August 1996

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1168th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1996, at 10 a.m.

Chairman: Mr. BANTON

later: Mrs. SADIQ ALI

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (continued)

Bosnia and Herzegovina

Former Yugoslav Republic of Macedonia

ORGANIZATIONAL AND OTHER MATTERS (continued)

Seventh meeting of persons chairing human rights treaty bodies

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17824 (E)

The meeting was called to order at 10.10 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Bosnia and Herzegovina

1. Mr. ABOUL-NASR said that the Permanent Representative of Bosnia and Herzegovina in Geneva should be invited to attend the Committee's discussion.

2. After a discussion in which Mr. GARVALOV and Mr. van BOVEN took part, the CHAIRMAN suggested that the Committee should proceed with discussion of the situation in Bosnia and Herzegovina and invite the Permanent Representative of Bosnia and Herzegovina to attend the Committee's discussion of its conclusions and any draft decision it might prepare.

3. It was so decided.

4. Mr. van BOVEN, speaking as rapporteur for Bosnia and Herzegovina, recalled the Committee's decision 1 (48) on Bosnia and Herzegovina, adopted at the previous session, concerning recommendations for follow-up action by the Committee, ways in which the good offices of the Committee could be used to promote understanding between ethnic groups in Bosnia and Herzegovina and the organization of a meeting between the Committee and the newly established Commission on Human Rights for Bosnia and Herzegovina. That decision had not yielded any results so far.

5. A number of current concerns about the situation in Bosnia and Herzegovina were described in a report of July 1996 by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the former Yugoslavia (E/CN.4/1997/5). The report dealt with the elections planned for September 1996, which did not come within the Committee's mandate, although the Special Rapporteur had pointed out that the elections might actually confirm the ethnic divisions in the country, as had happened in the Mostar elections in June 1996, by producing an unrepresentative result in areas which had been subject to "ethnic cleansing".

6. The report described the gradual return of refugees to areas where their communities were in the majority, although there had been virtually no return to areas where the refugees had become a minority (E/CN.4/1997/5, para. 27). Members of the Bosniak, Croat and Roma minorities in Republika Srpska were subjected to systematic intimidation and administrative discrimination, from racist abuse to actual physical attacks. In most incidents, the local police failed to intervene or conduct proper investigations (para. 29). The Serbs remaining in the suburbs of Sarajevo had been subjected to considerable harassment, including beatings, death threats, eviction, robbery and arson, and many Serbs had felt obliged to abandon their homes (para. 30).

7. Further information about the situation in Bosnia and Herzegovina was contained in a statement by the United Nations Security Council dated 8 August 1996, in which the Council had condemned all acts of ethnic harassment, had called upon the parties to the General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Accords) to stop the trend of

ethnic separation in the country and to preserve their multicultural and multi-ethnic heritage and had deeply regretted the undue delay in the creation of new independent media and the preservation of property rights. It had stressed that persons indicted by the International Tribunal for the former Yugoslavia who had failed to appear before the Tribunal should not stand for or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina. Finally, the Council had stressed that compliance with the requests and orders of the International Tribunal was an essential aspect of the implementation of the Peace Agreement, and that it was ready to consider the application of economic enforcement measures to ensure compliance by all parties with their obligations under the Agreement. In other words, the Security Council was considering economic sanctions, which was probably the only means of enforcement open to it.

8. Turning to the potential role of the Committee in the implementation of the Peace Agreement, he pointed out that the Committee was specifically mentioned in annex 6 to the Agreement, which dealt with human rights. He offered to draw up a short working paper expressing the Committee's concern at the continuing ethnic separation and ethnic cleansing in Bosnia and Herzegovina and calling upon all parties to cooperate with the International Tribunal. The Committee would then repeat its offers of assistance in connection with the matters listed in decision 1 (48). In addition, the Committee might draw the attention of all parties concerned to the provisions of article 4 of the Convention. There had been numerous reports of local radio broadcasts inciting racial hatred, and attempts had been made to set up independent media services, with the assistance of the Organization for Security and Cooperation in Europe. Article 4 could provide more valuable guidance in that field than any other international instrument. The Committee could also recommend to the High Commissioner for Human Rights the establishment of a programme of technical assistance in the field of education, based on the provisions of article 7 of the Convention. A contribution by UNESCO might also be valuable. The Committee could then discuss the working paper at a later meeting, to which the Permanent Representative of Bosnia and Herzegovina could be invited.

9. The CHAIRMAN, speaking as a member of the Committee, suggested that the working paper should include a reference to article 5 (b) of the Convention, dealing with the right to State protection against violence committed by Government officials or individual groups. Many reports of ethnic conflicts throughout the world described abuses actually committed by law enforcement officials or their failure to protect the victims of violence.

10. Speaking as Chairman, he suggested that Mr. van Boven should draw up his working paper and submit it to the Committee for consideration at a subsequent meeting.

11. It was so decided.

12. Mr. ABOUL-NASR wondered whether the return of refugees in Bosnia and Herzegovina should be a precondition for elections. The Secretary-General of the North Atlantic Treaty Organization, Mr. Javier Solana, had visited Bosnia and Herzegovina and concluded several agreements while he was there. Would information on them be included in the working paper?

13. Mr. de GOUTTES supported the proposals made by Mr. van Boven, particularly those relating to control of the media, education and training to promote inter-ethnic understanding, and cooperation with the International Tribunal.

14. There were numerous international initiatives under way in Bosnia and Herzegovina. The Committee should consider how to improve cooperation with other United Nations and international organizations in the area and establish contacts in Geneva with the Special Rapporteur of the Commission on Human Rights, with the Ombudsman, and with the Human Rights Chamber. The Chamber was made up of local and international judges who were responsible for ensuring the application of domestic and international instruments, such as the Convention, and therefore could provide information to the Committee.

15. Mr. GARVALOV said that in his opinion, the elections to be held in Bosnia and Herzegovina in September 1996 would merely confirm ethnic divisions. The Committee should consider organizing a mission to Bosnia and Herzegovina, as it had done for Kosovo and all parties to the conflict should be encouraged to cooperate fully with the International Tribunal.

16. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms on racial discrimination were weak and the European Framework Convention for the Protection of National Minorities did not provide for monitoring mechanisms, which meant it was of limited use. That left the International Convention on the Elimination of All Forms of Racial Discrimination as the main instrument that could help solve the problems in Bosnia and Herzegovina.

17. Mr. SHAHI said that the working paper should also include reference to whether free and fair elections could feasibly be held before the persons indicted for war crimes had been arrested. There was some argument as to whether conditions were right for elections in September which were likely to lead to the ethnic partition of Bosnia and Herzegovina.

18. Mr. DIACONU said that it was true that the European Convention for the Protection of Human Rights and Fundamental Freedoms referred only indirectly to discrimination on the grounds of race or national origin. However, the Council of Europe was working on an additional protocol to the Convention. Europe would then provide powerful protection for ethnic minorities.

19. Efforts to keep to the timetable for elections laid down in the Dayton Accords were not necessarily misguided. The international community needed to be able to work with a legitimate Government that reflected the realities of the situation in Bosnia and Herzegovina if progress were to be made.

20. The populations in Bosnia and Herzegovina were not ready to coexist, whether elections took place or not. Some Serbs had been forcibly evicted from their homes in Sarajevo, but many had chosen to leave voluntarily, rather than live under Muslim control.

21. Mrs. Sadiq Ali took the Chair.

22. Mr. CHIGOVERA said, according to the report of the High Commissioner for Human Rights (E/1996/87) on the situation in Bosnia and Herzegovina, Croatia and Yugoslavia, progress in the protection of human lives had already been made, but there was still enormous work to be done in the field of human rights. Local authorities were making it difficult for various ethnic groups to return to their homes. The High Commissioner's conclusions listed what he believed were the priorities of the human rights programme, which included taking a determined position against impunity, a human rights education campaign and a programme for the protection of minorities. The Committee should take heed of those priorities.

23. Mr. de GOUTTES, referring to comments made on European human rights bodies and instruments, said that the Council of Europe had set up a European Commission against Racism and Intolerance which had proposed extending the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms to cover racism, on the basis of an additional protocol to the Convention.

24. Mr. Banton resumed the Chair.

25. Mr. ABOUL-NASR, supported by Mr. SHERIFIS, said that he did not agree that none of the ethnic groups in Bosnia and Herzegovina wanted to live together. That may be true for some, but not all. Most Muslims, for example, wanted to coexist. Education programmes and the media should be used to encourage populations to return to their homes.

26. Mr. van BOVEN said, with regard to elections in Bosnia and Herzegovina, that there was one school of thought, also to be found among members of the Security Council, that was in favour of letting the political process agreed in the Dayton Accords take its course and remaining faithful to the timetable for elections. According to the statement of 8 August 1996, the Council had stressed the importance of elections in Bosnia and Herzegovina for the establishment of common institutions and as an important step towards normalization.

27. In paragraph 33 of her report (E/CN.4/1997/5) however, the Special Rapporteur of the Commission on Human Rights stated that present conditions were not conducive to the democratic operation of the electoral process. Those conditions included the failure to permit significant voluntary return to areas where returnees were now part of minority populations. Although from the Committee's point of view he had greater sympathy with the views of the Special Rapporteur, the views of the Security Council prevailed.

28. With regard to the comments made by Mr. Garvalov, he said the Committee might perhaps at some time discuss with the State party the possibility of sending a mission to Bosnia and Herzegovina.

29. Of the various options available to ensure cooperation with the International Tribunal, the most appropriate, and the one which appeared to be favoured by the Security Council, was to put additional pressures, probably of an economic nature, on the parties which failed to cooperate.

30. With regard to the next step to be taken, the Committee might wish to review its discussion later in the session on the basis of the paper which he would prepare and then take up the matter with the representative of the State party, as well as with other parties to the Dayton Accords.

31. Mr. YUTZIS said that the international community appeared to have forgotten the large-scale rape, murder and house-burning which had marked the breakup of the former Yugoslavia. Those events had destroyed the very fabric of society, which could not be repaired by an institutional framework alone. The Dayton Accords made no provision for such repair, and the Committee had both the right and duty to act in an advisory capacity in the social reconstruction process, but would need to make its voice heard. It might therefore set up a small working party to put forward proposals for such a role. In that connection, it was regrettable that his earlier proposal that the Committee should work as a United Nations expert body on inter-ethnic and interracial conflict had not been taken up.

32. The CHAIRMAN suggested that that role might come within what the United Nations Secretary-General had described as post-conflict peace-building. As such it would tie in with the Committee's position on Rwanda and ethnic separation generally. A working party might be useful, but a document would have to be prepared as a basis for discussion and some contact would be necessary with people outside the Committee who were working on similar lines.

33. Mr. YUTZIS said that the Committee would need to ensure that, if such a mechanism was established, arrangements were also made for follow-up and evaluation.

34. Mrs. SADIQ ALI suggested that some Committee members might act as international observers to ensure fair and free elections.

35. Mr. van BOVEN said that the suggestion merited further consideration as the Dayton Agreement certainly provided for election observers. It might be better for members to undertake such a function in a private capacity rather than as Committee members.

36. The CHAIRMAN suggested that the matter be taken up again later in conjunction with the question of Serbia and Montenegro. The Committee might also communicate with those representing the interested States parties.

Former Yugoslav Republic of Macedonia

37. Mr. RECHETOV said that, according to the 1991 census, the largest ethnic group in the former Yugoslav Republic of Macedonia was the Macedonians, numbering approximately 1,200,000, the second largest group was the Albanians, numbering 377,000, and other ethnic groups included Serbs, Gypsies and Turks. It was difficult to know how accurate the official figures for the Albanian population were. In the past, Macedonian Albanians had moved to the province of Kosovo in the Federal Republic of Yugoslavia (Serbia and Montenegro), in part because higher education in the Albanian language had been available there. Now, because of the unrest in Kosovo, they were returning to the former Yugoslav Republic of Macedonia. The Albanian population also had a higher-than-average birth rate. For all those reasons, Albanian sources

claimed that the proportion of Albanians in the population was not 21 per cent, which was the official figure, but as much as 30 per cent.

38. There were a number of areas of conflict between the Macedonian and Albanian populations. The Albanians were mostly Muslim, and held particularly strict views about education, which had led to a deterioration in relations between them and the Macedonian authorities. There were fewer Albanian-language schools than there had been, and university education still caused problems, although it was planned to open an Albanian-language faculty at Skopje University. The access of Albanians to television programmes and other media was limited because of the language problem. Albanians were under-represented in local administration and law enforcement, even in areas where they formed the majority of the population.

39. Non-governmental organizations had suggested various ways of improving the ethnic situation, for instance, by changing the wording of the Constitution so that the Macedonians were no longer treated as the "leading nation", or ending the status of the Orthodox Church as the official State religion. Other measures might be to increase the number of Albanians in local administration and law enforcement and provide more Albanian-language teaching at both school and university level.

40. It was important for the Albanian population of the former Yugoslav Republic of Macedonia to reaffirm its commitment to a unified State. He hoped that the Committee would have constructive ideas to offer in a situation which was serious but not yet hopeless.

41. Mr. ABOUL-NASR asked if there were foreign observers in the former Yugoslav Republic of Macedonia.

42. Mr. DIACONU asked for clarification of the term "leading nations" and whether it was used in the Constitution. Also, did the Constitution stipulate that the Orthodox religion was the official religion of the State? It would also be interesting to know whether Albanians were represented in the Parliament, whether the Albanian language was used in universities and whether Albanians wanted their own, separate, universities.

43. Mr. GARVALOV asked when the initial report of the former Yugoslav Republic of Macedonia would be submitted. It was his understanding that the Macedonian Church came within the framework of Eastern Orthodox Churches but that it had been recognized only by the Ukrainian Church, which had not been recognized by the other Churches.

44. Mr. RECHETOV (Country Rapporteur) said that international organizations were represented in the former Yugoslav Republic of Macedonia. With regard to the meaning of "leading nation", he said that, according to his information, the Republic was defined as "a nation State of Macedonian people". As in Russia, the number of people belonging to the Orthodox Church suggested that it was the most important.

45. There were Albanians in the Parliament. However, they felt that they were not sufficiently represented.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Seventh meeting of persons chairing the human rights treaty bodies (CERD/C/49/Misc.4)

46. The CHAIRMAN asked for the Committee's guidance as to what matters he should raise at the seventh meeting of persons chairing the human rights treaty bodies, to be held from 16 to 20 September 1996. The question of participation in the consideration of States parties reports by committee members who were nationals of the reporting State had already been raised, and in that connection he had requested that the relevant parts of the summary records of the discussions held in March 1996 should be made available to persons attending the chairpersons' meeting. He had also requested that the documentation relating to the Committee's discussions concerning the failure to get the meeting of States parties to consider matters other than elections to the Committee, together with the comments by Mr. Garvalov and Mr. Valencia Rodriguez, should likewise be made available.

47. Another matter to be raised was the proposal that States parties, instead of submitting separate reports in respect of each human rights covenant or convention, should prepare a single comprehensive report, and his draft (CERD/C/49/Misc.4) had been prepared as a basis for discussion.

48. Mr. van BOVEN said that the meeting of chairpersons should also discuss the lack of adequate structural support given to the treaty bodies by the Human Rights secretariat.

49. Mr. GARVALOV said he agreed with the points made by the Chairman in his draft (CERD/C/49/Misc.4). In preparing for the seventh meeting, the Committee would need to consider its reactions to the report of the sixth meeting and the experience it had gained at its two 1996 sessions. Points that commanded general consensus among the treaty bodies were the two principles of States parties' compliance with the human rights treaties and universality. The former did not necessarily follow on from the latter, as could be seen in the case of the widely ratified Convention on the Rights of the Child. The problem of overdue reports was another common concern on which the Committee could usefully share its experience with others. He had been under the impression that the other treaty bodies shared the Committee's unanimous agreement about the importance of the Committee's early warning and urgent procedures, but had been disheartened to find at the sixth meeting that one of the chairpersons now appeared to be opposed to the idea.

50. All avenues should be explored to achieve closer cooperation among the treaty bodies and between them and United Nations organs, an example being the joint meeting with the Sub-Commission on Prevention of Discrimination and Protection of Minorities. He would not encourage a proliferation of common activities, but joint action in certain areas would be welcome. The Chairman might also wish to stress the importance the Committee attached to direct contact with the Secretary-General on matters which it deemed urgent and essential.

51. He was against the idea of States parties submitting a consolidated report as being likely to impair the efficacy of the Committee's consideration of States parties' reports. It was up to the States parties, and no one else, to decide whether the Convention should be amended or not.

52. Mr. VALENCIA RODRIGUEZ, endorsing the content of the Chairman's draft, said that the Chairman could usefully inform the other chairpersons of the Committee's procedure and practice in dealing with overdue initial and periodic reports.

53. The only reference in the Convention to the functions of meetings of States parties was in article 8, paragraph 4, and concerned elections of Committee members. If, however, the States parties themselves wished to broaden the scope of their competence, they might, at the request of the persons chairing the human rights treaty bodies, deal with other, substantive matters of importance to the Committee. Another major question was the follow-up to the Committee's meeting with the Sub-Commission. A further joint meeting was needed to discuss action to be taken on suggestions and recommendations that had not been followed up. In general, exchanges of information with other treaty bodies, especially the Commission on Human Rights, needed to be stepped up. Emphasis should be placed on more effective contact with the Secretary-General, the High Commissioner for Human Rights and other United Nations bodies, including the possibility of direct contact with the Secretary-General where that was justified. The Chairman should also refer to the Committee's contribution in conducting field missions and inform the other bodies of the results of such missions. He might request the cooperation of the other treaty bodies in seeking to obtain the reports referred to in paragraph 2 (b) of article 15 of the Convention, so that the Committee could fulfil its obligations under that article. On the subject of the submission of a consolidated report, he urged compliance with the provisions of article 9, paragraph 1, of the Convention.

54. Mr. SHAHI, expressing his general agreement with the Chairman's draft, said that, while he understood the reasons behind the proposal that States parties should submit a single consolidated report, he was not sure that a single report would ease the burden on reporting States. All the human rights instruments were different, as were the reporting guidelines, recommendations and requirements evolved over the years by the various treaty bodies. He agreed with the statement in paragraph 8 of the Chairman's draft that the Committee wished the monitoring process to be improved and would deplore any deterioration in standards. The Committee should adhere to its mandate under the Convention and to its past practice, the onus being on those who advocated a consolidated report to adduce convincing arguments in writing.

55. He was concerned to hear that one of the chairpersons of the treaty bodies opposed the Committee's work and its recommendations to others in regard to early warning and urgent procedures. He drew attention to paragraph 4 of document A/48/18, annex III, from which it was clear that the Committee's early warning and urgent procedures had been adopted precisely because of the encouragement given by the Secretary-General to treaty bodies to bring massive violations of human rights to the attention of the Security Council together with recommendations for action. Jurisprudence had now emerged on human rights action by the Security Council, which was the only

United Nations body with the potential - if not always the will - to take action to prevent massacres. He therefore agreed with other members that the Committee should bring cases of massive violations directly to the attention of the Security Council. After the express request by the Secretary-General, it would not be consistent with its status as an international treaty body to report through some other institution or individual. He also strongly supported the proposal to establish more effective contacts with the High Commissioner for Human Rights and with other treaty bodies. Liaison procedures and regular meetings between the chairpersons already existed; it was now a matter of ensuring effective follow-up. The Committee could play an appreciable role in conducting field missions, but he had some doubts about proposing members as election observers, since the United Nations had special procedures for such functions. Post-conflict peace-building was, however, an appropriate context for the Committee to assert its role.

56. Mr. ABOUL-NASR observed that some of the subjects being discussed involved changes to the very nature of the Committee's work and the Convention itself. He was not in favour of States parties submitting a consolidated report to all treaty bodies. While he agreed with most of the points raised by other speakers, he objected categorically to the Committee taking any matters directly to the Security Council. The Convention, in article 9, required it to report annually, through the Secretary-General, to the General Assembly. The Security Council was a political body dominated by one member which intervened in the affairs of certain States, applying double standards, and did not represent the majority will. His outlook on field missions was very conservative. Although they should have some backing, they did not fall within the scope of the Convention, and he was reluctant to accept any further expansion of the scope of the Convention, which aroused fears among States parties.

57. It would be useful to exchange views with other treaty bodies on the problems encountered with overdue reports. One of the main reasons for the failure by States parties to the Convention to report to the Committee, apart from the expense and time involved, was the huge number of questions they were expected to answer and the fear of appearing before the Committee because of the way it functioned and the kind of questions it asked. A case in point was the direct questioning on the subject of article 14 of the Convention, a clause which the western European countries had at the time sought to make binding, as they had done for the Optional Protocol to the International Covenant on Civil and Political Rights, an endeavour resisted by the overwhelming majority of States Members of the United Nations. Experts on the Committee belonging to that same group of countries now continued to press the point with reporting States. It would be useful to hear the views and share the experience of other treaty bodies on the question of the burden of reporting obligations and on the continued broad interpretation of the scope of the Convention.

58. Referring to the important question of the effects of the highly inadequate administrative services on the work of the treaty bodies, he drew attention to the huge workload and financial restrictions affecting the Centre for Human Rights, and asked whether the chairpersons of the treaty bodies could consider ways and means of alleviating its task and specify what they

expected of the Centre. He saw the meeting of chairpersons as an opportunity for treaty bodies to benefit from each other's experience but not to trespass on each other's domain.

59. Mr. van BOVEN, speaking on a point of order, referred to the point raised by Mr. Aboul-Nasr concerning article 14 of the Convention. Article 14 and the Optional Protocol to the Covenant on Civil and Political Rights were not, as he had suggested, a typically western proposal defeated by a large majority. The proposal to include the clause that had become the Optional Protocol in the Covenant had originally been put forward by Nigeria and the Netherlands, had not initially been favoured by the United Kingdom and France and had been rejected by a majority of one vote. He cautioned against over-simplification and against thinking of certain issues as pitting the West against all other delegations. The United Kingdom, for instance, had still not made the declaration under article 14.

60. Mr. ABOUL-NASR, speaking on a point of order, said that the countries which had voted for and against the proposals at the time were on record and could be checked. With respect to the Covenant, he himself had presented the motion to place the relevant clause in a separate protocol, a motion which had been carried by one vote.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1169
6 November 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1169th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 August 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fourth to seventh periodic reports of Namibia

Tenth to thirteenth periodic reports of Venezuela

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17820 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fourth to seventh periodic reports of Namibia (CERD/C/275/Add.1)

1. At the invitation of the Chairman, Mr. Nujoma (Namibia) took a place at the Committee table.

2. The CHAIRMAN, noted that the report under review was the first report submitted by the Namibian Government since Namibia had achieved independence and extended a special welcome to the representative of the State party.

3. Mr. NUJOMA (Namibia), introducing his country's report, said that part I, "General", summarized the information in the core document on Namibia's colonial past, the liberation war fought under the banner of SWAPO and the country's accession to independence on 21 March 1990.

4. Part II, as its title indicated, contained information relating to articles 2 to 7 of the Convention. The people of Namibia had decided never to return to their colonial past of racial discrimination, and after independence the Government had introduced a policy of national reconciliation aimed at encouraging all Namibians to work together to develop the country in peace and unity, with racial discrimination in all its forms outlawed.

5. Certain acts and practices of racial discrimination carried extremely harsh penalties (Racial Discrimination Prohibition Amendment Act, 1991). Namibia had inherited a considerable body of legislation which blatantly discriminated against blacks. Most of that legislation had been repealed some even before independence. Measures had also been taken to ensure that no one was refused access to community facilities or membership in an association, for example, for reasons based solely on race, colour or ethnic origin. Not all racially discriminatory legislation had been repealed or amended, however. The Government had taken affirmative action to redress imbalances resulting from apartheid in sectors such as education and employment (para. 15). Incitement to racial discrimination was prohibited by law. The policy of national reconciliation had been fully accepted by all Namibians. In the five years since independence, only one case relating to racial discrimination had been brought before the courts (para. 26). It was clear from the case in question that it was the private sector, not the State or administration, that was responsible for problems of racial discrimination. Section 11 (1) (b) of the Act of 1991, under which those persons had been charged, was in fact broader than article 4 of the Convention, and would therefore need to be amended. One drawback of the Act was that section 18 stipulated that no trial for an offence under the Act could be instituted without the written authority of the Prosecutor-General in each case (para. 27). That was a serious and unusual obstacle, and would appear to indicate that Namibia did not provide the victims of discriminatory acts with an effective remedy as required by article 6 of the Convention.

6. Civic education was part of all school curricula (para. 31). A Committee for Civic Education, which included private organizations as well as governmental institutions, had been established. To date, it had organized two major conferences on civic education in Namibia and drafted the blueprint for a framework for civic education (para. 32).

7. The report had been prepared by the Ministry of Justice, with contributions from other ministries and from non-governmental organizations. The NGOs had raised the objections to the powers of the Prosecutor-General which he had mentioned earlier. He believed that Namibia was on the right track, that racial discrimination did not have an adverse effect on national life and that the policy of national reconciliation was bearing fruit.

8. Mr. CHIGOVERA (Country Rapporteur) paid tribute to Namibia for conscientiously fulfilling its international obligations: having acceded to independence only six years earlier, and despite serious difficulties, it was already submitting a report to the Committee, which was impressive. In his view, the report should be considered an "initial" report, for it represented the first opportunity that Namibia had had to describe the legislative or administrative measures it had taken to combat racial discrimination. The report had been compiled according to the Committee's guidelines. The questions and comments he would make should therefore not be taken as criticism, but as ways of obtaining additional information.

9. He welcomed the policy of national reconciliation introduced by the Government (para. 4), which was the cornerstone of the stability enjoyed in Namibia. He would like additional information on the different linguistic groups mentioned in paragraph 5 of the report and their distribution among the different regions of Namibia. Specifically, what was the Government doing to bring the Bushmen into the political, social and economic mainstream? Had the Government taken preferential measures to provide the majority black population with a larger proportion of productive land and raise its standard of living? Where did people of mixed race fall in terms of land distribution, as referred to in paragraph 5 of the report?

10. Concerning paragraph 7, he wondered whether the Constitution contained criminal provisions to ensure implementation of the Convention or whether it permitted Parliament to enact the necessary criminal legislation. He would also appreciate it if the Committee could be provided with the provisions of the 1991 Act eradicating racial discrimination, for example when Namibia's next report was considered.

11. He noted (paras. 11 to 13), that there were two parallel systems of law governing estates and succession in Namibia, one applicable to whites and coloureds and the other to blacks. That was a situation frequently found in Africa, especially in former British colonies, where African customary law coexisted with so-called general law. The question was whether the existence of two parallel systems amounted to "racial discrimination". Since customary law was part of the African way of life, he wondered whether the planned "standardization" (para. 13) was an appropriate approach. In any event great care would need to be exercised. On another matter, what was meant by the "usual marital regime" (para. 14)?

12. It was impressive that the affirmative action policy was embodied in the Constitution (para. 13). According to the last sentence in paragraph 15, such measures should be passed in the course of 1995. Had they been passed? Had specific legislation been enacted pursuant to article 23 (1) of the Constitution to prohibit and criminalize racial discrimination and the practice and ideology of apartheid? What law was being referred to in paragraphs 18 and 19 of the report? Might the text of that law be provided? What was meant by the preambular provisions of the Constitution guaranteeing fundamental rights (para. 22)? Were they substantive provisions? In the third to fifth lines of paragraph 212 ("regardless of race, colour ...") no mention was made of national origin. Was discrimination based on national origin permitted?

13. With regard to article 6 of the Convention, paragraph 23 of the report mentioned a State-sponsored legal aid scheme. How accessible was the scheme to indigent people, and had it been brought to the attention of people in remote areas? Were the offices of the scheme set up in various rural locations? The same paragraph mentioned the appointment of an Ombudsman, but there was no indication of what remedies the Ombudsman provided in cases of racial discrimination and how they were enforced.

14. Paragraph 26 of the report stated that only one case of racial discrimination had been brought before the courts under the 1991 anti-racial discrimination Act, and the State party's remarks generally gave the impression that problems in that area were under control. Yet a non-governmental organization, the National Society for Human Rights in Namibia, said that racial discrimination still existed in both the public and private sectors. According to that organization's report, senior officials and members of the diplomatic corps were often appointed on the basis of ethnic criteria, and Government policy was based on tribalism and nepotism. Without endorsing or rejecting the report's contents, it would be useful to know the Namibian delegation's views on the matter.

15. He was troubled by the last sentence of paragraph 22, which appeared to indicate that the protection provided to Namibians under section 11 (1) (b) of the 1991 anti-racial discrimination Act might be reduced in order to bring them into line with the provisions of the Convention. Was that so?

16. Paragraph 27 of the report contained a reference to article 18 of the 1991 anti-racial discrimination Act which stipulated that no trial would be instituted without written authority from the Prosecutor-General. He wondered whether that requirement did not reduce the scope and effectiveness of the Act. He would also like to know whether it applied to proceedings instituted by individuals.

17. The report also indicated, without giving any details, that black persons were still discriminated against in many subtle ways. Further details would be welcome on that discrimination and the steps taken by the authorities to combat it.

18. Concerning article 7 of the Convention, the introduction of civic education as a cross-curricular subject directed at combating racial discrimination was a commendable step. In particular, the establishment of a

cross-ministerial national Committee for Civic Education involving private organizations and institutions was a positive approach to establishing suitable curricula geared to promoting social harmony among young people. He would like to know about the progress made by the Committee. If the delegation had no information, the Committee would welcome details in the next report. Concerning education, he would like to know whether the segregation existing under the apartheid regime continued, and if so, what measures had been taken to integrate the educational system. Did black children have access to former white schools? It was unlikely that the social studies curriculum for grades 4 to 7 mentioned in paragraph 34 of the report would be effective if white and black children studied in segregated classes.

14. Paragraph 46 stated that racial discrimination was not a problem of national life. The description in the report of the National Society for Human Rights in Namibia, however, was quite different: it stated that the authorities had not taken sufficient steps to close the income gap between the different racial groups, that there had been several cases of discrimination against blacks in employment, especially in recruitment, training and promotion and that the authorities hesitated to act on complaints for fear of impeding the policy of national reconciliation. He would be interested in hearing the views of the representative of the State party on those statements.

15. Mr. de SCHUTTER said that a number of lessons could be drawn from the report. First, racial discrimination had not disappeared after Namibia's accession to independence. Paragraph 6 of the report indicated that the white population, which was no more than 5 per cent of the total, enjoyed a high standard of living while most of the black population lived in abject poverty. Wide gaps still existed between the two communities, especially in income, education, employment, housing and land distribution. Discriminatory legislation also still existed. The report (para. 11) mentioned the laws regulating succession and the administration of estates, which established different systems for whites, coloureds and blacks. Paragraph 14 of the report also indicated that there was a special system for marriage between blacks.

16. In view of that situation, the authorities had taken a number of steps, especially through the Law Reform and Development Commission and the Master of the High Court. He would like to know what reforms had been undertaken and whether they were being conducted with respect for age-old customs, especially regarding succession. Similarly, more details on the affirmative action mentioned in paragraph 15 of the report would be welcome.

17. The discussion on article 4 of the Convention would appear to indicate that Namibian legislation laid down punishment for most acts of racial discrimination and compensation for the victims. But the report gave only two examples of cases brought before the courts, which was very few for a country like Namibia, where the racist practices of the past had not completely disappeared. Were victims informed of their rights, and did the police and judicial authorities investigate cases of racial discrimination conscientiously? The very small number of cases brought before the courts might also be explained by the fact that, under section 18 of the 1991

anti-racial discrimination Act, no trial could be instituted without written authorization from the Prosecutor-General. The information provided indicated that that provision, which hindered the exercise of the right to bring a case before the courts, might soon be repealed. What exactly was the situation?

23. Knowing that the Namibian authorities were deeply concerned about the problem of racial discrimination, he would like to know whether the Government was planning to make the declaration under article 14 of the Convention.

24. Mrs. ZOU said that, in view of Namibia's colonial past, much time and effort would be needed to eliminate racial discrimination permanently. Paragraph 6 of the report indicated that what the white population earned in a day of work, the urban black population earned in two weeks and the rural black population in one year. That was a wide gap, and one was justified in asking what measures had been taken by the Government to remedy that situation. Did whites and blacks receive equal pay for equal work? Since improving the education of blacks was certainly the best means of reducing the gap between them and whites in the economic and social area, what efforts were the Government making in that area, and especially, what steps had been taken to end segregation in education and combat illiteracy among blacks? Were all black children able to attend school, and what was the percentage of black students in university?

25. Mr. VALENCIA RODRIGUEZ said that the information in the "General" section of the report showed that after many years of apartheid, fundamental freedoms were guaranteed in Namibia under a democratic regime which respected the independence of the judiciary. Nevertheless, major disparities persisted in the economic and social areas. Five per cent of the population earned over 70 per cent of the income, whereas 75 per cent of the very poor earned only 7 per cent. How were the authorities handling that situation, which was a potential source of serious political problems for the country?

26. With regard to article 2 of the Convention, the adoption of the 1991 anti-racial discrimination Act mentioned in paragraph 7 of the report was commendable, but it would be useful to know how the law was implemented.

27. Paragraph 8 of the report described legislative measures under which no public or private service could deny a person access to public amenities solely on racial grounds. He would like to know whether those measures concerned institutions only or whether they also applied to individuals.

28. Paragraph 11 of the report stated that Namibia had inherited a considerable body of legislation which blatantly discriminated against blacks and that not all such legislation had been repealed or amended. Were there other such laws in addition to those mentioned in the report, and if so, why were they still in force? Concerning affirmative action, paragraph 15 of the report stated that Parliament could enact legislation providing for the advancement of socially, economically or educationally disadvantaged Namibians. Had such legislation been enacted, and if so, what was its purpose and which categories of individuals was it supposed to protect?

29. Regarding article 4 of the Convention, the measures taken to punish those responsible for acts of discrimination and racial violence were commendable. Since the delegation had indicated that the State party was reviewing that legislation, he would like to know whether it was planning to amend it to bring it fully into line with the provisions of the Convention.

30. In view of Namibia's colonial past and continuing discriminatory practices, the information provided in paragraph 22 on the measures taken pursuant to article 5 of the Convention should be expanded. More details would be welcome on how the rights laid down in article 5 were guaranteed. Paragraph 23 of the report indicated that there were provisions which enabled individuals to obtain remedies for violations of their rights. According to paragraph 26, however, only one case of racial discrimination had been brought before the courts under the 1991 anti-racial discrimination Act, and that case had been withdrawn in September 1995. More information on that case would be welcome.

31. With regard to article 7 of the Convention, the steps taken in the areas of education, culture and information were highly positive, and the Namibian authorities should be encouraged to continue in that direction.

32. Mrs. SADIQ ALI noted with satisfaction that Namibia had submitted a report reflecting its policy of national reconciliation. The fact that non-governmental organizations had for the first time been involved in preparing a report for the Committee was also a very positive step. The report called for a few comments, however. First of all, what had been the impact of the austerity measures requiring all ministries to reduce their budgets by 4 per cent to enable the Government to finance the anti-drought programmes? Second, what progress had been made in integrating black teachers into white schools? The Committee would be very interested in knowing what progress had been made in that area, which related to paragraph 2 (2) of the Convention. According to information published in the press in May 1994, agricultural workers in Namibia were exploited or ill-treated by white farmers: there had reportedly been wrongful dismissals, the workers were not free to organize, they were underpaid and their lodgings were deplorable. What were the authorities doing to ensure respect for the provisions of labour legislation? How were abuses punished?

33. According to other information published in the press in June 1994, there was only 1 black university student for every 500 whites, and positions of responsibility in businesses continued to be held by expatriates for the most part. What was being done for the advancement of black managers and executives? Concerning land ownership, after 5 years of independence, 4,000 white farmers still owned 35 million hectares of farmland. Since nationalization of land was prohibited, landowners had reportedly been asked to give up land in a spirit of national reconciliation and in pursuance of the new land reform legislation. Since the land question in Namibia was closely related to the problems of poverty and unemployment, it would be very useful to know how much land had in fact been redistributed.

34. The CHAIRMAN said that the Committee would continue its consideration of the report of Namibia at a later meeting.

35. Mr. Nujoma (Namibia) withdrew.

Tenth to thirteenth periodic reports of Venezuela (CERD/C/263/Add.8 and CERD/C/263/Add.8/Rev.1; HRI/CORE/1/Add.3)

36. At the invitation of the Chairman, the Venezuelan delegation took places at the Committee table.

37. Mr. SUAREZ FIGUEROA (Venezuela) said that, for an understanding of the problem of racial discrimination in his country, it was necessary first to point out that for historical reasons over half of the population was the product of a racial mix of Indians, Europeans and Africans. Ethnic equality had been established by successive constitutions, laws and decrees since 1810, and article 61 of the current Constitution prohibited discrimination based on race, sex, religious belief or social status.

38. It would be presumptuous, however, to state that there was no actual racial discrimination in Venezuela, for legal principles could be far removed from the actual situation in a society. Until 1958 (the year in which democracy had been re-established), there had been virtually no coloured students in the military schools, and there had been no black bishops until the early 1990s. Fortunately the situation had changed, for one of the three main candidates in the 1993 presidential elections had been coloured. The question of racial equality in Venezuela had also recently been the subject of an interesting debate among experts.

39. With regard to indigenous people, according to a 1992 census there were 315,815 Indians in Venezuela belonging to 28 ethnic groups, comprising 1.5 per cent of the total population (20 million). For historical reasons, most of those ethnic groups lived in remote areas. The principle of equality between indigenous people and the rest of the Venezuelan population was established, but the authorities had also decided to take specific steps for the protection and assimilation of indigenous people. It was difficult, however, to reconcile those two objectives, and the economic and social crisis that had been affecting the country for about 10 years was aggravating the problems. Among recent initiatives for improving the situation were a bill on indigenous communities, peoples and cultures, approved by the Senate and submitted to the Chamber of Deputies, which would unify legislation on indigenous people. The Government was also considering ratifying ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries. In the judicial area, the Supreme Court had issued a judgement, or would do so shortly, on two cases involving indigenous land rights and a third case on human rights and tribal customary law. The census of indigenous people in 1992 had produced some valuable information from the administrative point of view. Regarding education, following the 1978 adoption of a decree on bilingual intercultural education, in 1995, 18 teachers belonging to three aboriginal ethnic groups had obtained diplomas. An agreement on health activities in the border areas had been concluded in 1991 between Colombia and Venezuela on behalf of indigenous populations, and the same year, two biosphere reserves had been established in the Delta del Orinoco.

40. The authorities were the first to acknowledge that those efforts were not enough, and they were prepared to work together with the 50 or so indigenous organizations in Venezuela to improve the situation. His delegation was at the disposal of members who wished to raise questions.

41. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said that Venezuela's population of 20 million included large indigenous, black and other minority groups. Venezuela also had large immigrant communities of Spanish, Italian, Portuguese and German origin, and many Colombians, Ecuadorians, Peruvians and Bolivians who had come in search of work, often illegally. There were reportedly over 1.5 million persons of foreign origin in Venezuela. According to an ILO report, foreign workers in Venezuela seemed in general to be recruited and employed under the same conditions as nationals, although there were occasionally some feelings of xenophobia. The Committee would appreciate more information in that connection.

42. The report to the Committee, CERD/C/263/Add.9/Rev.1, stated that article 61 of the Constitution provided for the principle of equality and prohibited racial discrimination. Indigenous people (over 315,000 people belonging to about 20 ethnic groups, according to 1992 figures) lived for the most part in remote and disadvantaged regions. The many steps taken by the Government to give effect to article 77 of the Constitution, which made special provision for indigenous communities, included the establishment of several bodies for indigenous affairs and the Agrarian Reform Act for the restitution of land, forests and water resources to indigenous communities. The Committee would appreciate more details on the progress made possible by those initiatives.

43. In the judicial sphere, the core document (HRI/CORE/1/Add.3) stated that the incorporation of international treaties into domestic law did not occur automatically. Once the required special law was enacted, however, the treaties in question (including the Convention) took precedence over other laws and could be invoked directly before the national courts. Similarly, international human rights treaties ratified by Venezuela acquired constitutional force. The Venezuelan authorities used that argument to explain why there were no provisions prohibiting racial discrimination in the legislation despite the obligation laid down in article 4 of the Convention.

44. With regard to article 5 of the Convention, he would like to know how effect was given to article 50 of the Convention, which granted to the individual rights not expressly mentioned in the Constitution. Additional information should also be provided on the conditions under which foreigners were entitled to vote in municipal elections.

45. With regard to article 6 there were no specific provisions enabling the victims of acts of racial discrimination to bring their case before the courts and nobody for granting compensation. Neither the Organic Law on the amparo procedure in force since 1987 nor article 374 of the Code of Criminal Procedure, both of which were very broad in scope, had been applied to cases of racial discrimination. With regard to article 7 of the Convention, the Committee would like further information on the steps taken in the area of education and in publicizing the Convention, in particular among minority groups.

46. The report showed that the Venezuelan Government had fulfilled the legal obligation it had assumed to submit periodic reports to the Committee. In order to give full effect to the provisions of article 4, however, it should enact special legislation of a preventive nature, as well as provisions specifically to facilitate access to the courts by victims of racial discrimination.

47. The fact that the Constitution recognized the rights of indigenous people, especially their right to cultural identity, was commendable. Nevertheless, a report by the Venezuelan Programme of Education and Action on Behalf of Human Rights (PROVEA) had noted that the provisions applicable to those communities were scattered and gave rise to confusion and anxiety. The Committee would therefore like information on bilingual education in indigenous schools and the relevant provisions of the Agrarian Reform Act. Amnesty International and the Department of State of the United States of America had condemned the abuses committed against indigenous communities during land conflicts. In 1994, three members of the Yupca community had in fact been killed by the army. The most primitive indigenous community in Venezuela, the Yanomamis, were reportedly often raided by Brazilian gold-seekers, and foreign mining activities were said to be harming the indigenous communities and the environment. It was also alleged that indigenous people did not take part in the political system because they were not informed about it and that they were often subjected to particularly serious ill-treatment.

48. PROVEA's 1994 report said that indigenous rights over mining and forest resources and their environment were violated, even by State enterprises, as was their right to life by the government security forces; according to PROVEA, the State was making no effort to take the social measures required in order for indigenous people to be able to work their land, preserve their health and receive bilingual education. The Indian National Council, for its part, stated that the Government's efforts had not improved the situation of indigenous people and that the recommendations in articles 2 to 7 of the Convention were not being properly implemented, which resulted in impunity for those responsible for violations. Finally, the ILO Committee of Experts on the Application of Conventions and Recommendations drew attention to the quotas for foreign workers, which violated its Migrant Workers Convention. As he would have preferred to hear all that information from the representative of Venezuela, it was to be hoped that the next report would be more specific on those points and show that Venezuela was aware of its obligations as a signatory of the Convention.

49. Mr. YUTZIS said that, since the Committee had before it two reports of Venezuela, bearing the symbols CERD/C/263/Add.8 - the symbol appearing in the provisional agenda - and CERD/C/263/Add.8/Rev.1, speakers should indicate to which report reference was being made.

50. The CHAIRMAN said that the confusion would be cleared up by the next meeting.

51. Mr. GARVALOV said he doubted the Committee was very convinced by the statement at the beginning of document CERD/C/263/Add.8 - that racial discrimination had not existed in Venezuela for more than a century - or the reference to article 61 of the Constitution enshrining the principle of equality for all citizens.

52. First of all, article 1 of the Convention interpreted racial discrimination very broadly and laid down an obligation for States parties to take a wide range of measures to combat it. If the Committee took at face value the simple statement that there was no discrimination in Venezuela, it would be admitting for the first time that a country could be totally devoid of racial discrimination. Yet at the very least, there were signs of discrimination in the ill-treatment of the Yanomamis and the Yupcas at the hands of the Venezuelan soldiers. Although the Committee found constitutional guarantees to be commendable, it always pointed out that they remained a dead letter until implementing legislation was enacted and became established judicial practice.

53. He welcomed Venezuela's adoption of a law incorporating the Convention into the country's domestic legislation, but he did not see how the country could implement that legislation properly without knowing the relative importance of the various indigenous groups in the population. Yet the data gathered by the censuses had never been broken down by racial origin - which according to the Government was proof that racial discrimination did not exist. In future, therefore, Venezuelan censuses should include specific data on the indigenous population. However small that population might be, all its rights - cultural, economic, social, civil and political, and not only its freedom of religion and belief - should be protected.

54. Mr. de GOUTTES said that document CERD/C/263/Add.8 showed that diverging views continued to exist between the Committee and the Venezuelan Government, but that some agreement was also emerging. The most important disagreement related to the claimed lack of racial discrimination in the country, which had four consequences: no steps had been taken to combat racial discrimination; it was impossible to describe the demographic make-up of the population; there were no criminal penalties for acts of racism; and the Convention had never been invoked before the courts. All that was logical but clashed with the Committee's position, that all States parties must provide information on the steps they were taking to combat racial discrimination. Information from various NGOs, in particular the Indian National Council, did indicate the existence of racial discrimination.

55. There were, however, some signs of convergence between Venezuela and the Committee in the report. The criminalization of acts of racism as offences was being examined in the new Penal Code under consideration in the legislature, as was a draft basic law designed to strengthen the rights of indigenous groups and amendments to article 77 (2) of the Constitution providing for the protection of indigenous cultures within a State. He asked about the status of those bills and whether the indigenous population had been consulted on matters affecting it.

56. There was a contradiction between the statement that prison regulat contained special provisions governing the treatment of Indians and the statement that the act concerning the penitentiary system made no provisi for special treatment for Indians; he would like that point to be clarifi He would also like more information on the serious acts of discrimination reported by the Indian National Council and other NGOs in the areas of justice, health and education, and on the acts of violence carried out by landowners, mining companies, tourist companies and even fundamentalist religious missions, according to the same sources.

57. Mr. AHMADU, referring to CERD/C/263/Add.8/Rev.1, asked about the Venezuelan population of African origin. The Government said that the population was harmoniously integrated. The representative of Venezuela alluded at the end of his statement, however, to problems in that area. Although the Government itself was not applying discriminatory measures, although the appropriate institutions existed, black Venezuelans did not appear to play a significant role in national life in areas other than sp He asked to what extent the black population was represented in services the diplomatic corps or the police.

58. Paragraphs 77 and 78 of the report repeated what had already been s in the twelfth report and by the Venezuelan delegation in 1989, that sinc racial discrimination did not exist in Venezuela, there was no need for legislation in that area. Yet the representative of Venezuela had said i 1989 that the executive branch had asked the legislative bodies to incorp provisions into the Penal Code to implement article 4 (a) of the Conventi He would like to know whether that had been done.

59. Mrs. ZOU also stressed the need for rigorous enforcement of the provisions of the Constitution and the relevant legislation. The Committ which was responsible for monitoring the implementation of the Convention knew that there could be a large gap between legislation and actual implementation, which was why it was particularly interested in the latte Document CERD/C/263/Add.8/Rev.1 and the oral introduction fell short in t respect.

60. The statement that there was no racial discrimination in Venezuela appeared to be questionable, for certain situations demonstrated otherwis For example, the indigenous populations were removed from the rest of the population. Did that mean they lived on reservations, as in the United States, and did that not imply discrimination? She did not see why it wa impossible to integrate minorities into the rest of the population withou causing them to lose their identity.

61. Paragraph 52 of the report stated that indigenous detainees were tr as separate groups. Did that not also imply discrimination? She wondere that connection whether indigenous people were tried by special courts, o specialized, or indigenous, judges.

62. She would also like more information on participation by indigenous people in political life, and to be told whether there were indigenous members of Parliament and whether they were consulted by the bodies that dealt with indigenous matters.

63. The report lacked information on the illiteracy rate and the number of indigenous people completing primary school, secondary school and higher education.

64. The Venezuelan delegation withdrew.

The meeting rose at 6 p.m.

UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1170
19 August 1996

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1170th MEETING

PRIV

Held at the Palais des Nations, Geneva,
on Wednesday, 14 August 1996, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Fourth, fifth, sixth and seventh periodic reports of Namibia (continued)

Tenth, eleventh, twelfth and thirteenth periodic reports of Venezuela (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17832 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fourth, fifth, sixth and seventh periodic reports of Namibia (CERD/C/275/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Nujoma (Namibia) resumed his place at the Committee table.

2. Mr. AHMADU commended the excellent report of Namibia, and the work done by the United Nations Council for Namibia which had submitted reports on Namibia prior to the country's independence. Namibia had adopted a systematic approach to the eradication of racial discrimination and was gradually demolishing what was left of the discriminatory legislation it had inherited from former colonial Governments. The spirit of forgiveness in the country was helping to integrate a hitherto divided society.

3. Certain questions remained unanswered. Were the smaller ethnic groups disappearing or declining and were the privileged groups of the population that had prospered under previous regimes emigrating or adjusting to the new situation in Namibia? Legislation intended to eradicate racial discrimination in all its forms was commendable, but it was not clear whether affirmative action was provided for or had been taken.

4. Namibia should consider submitting a core document to provide demographic and other relevant information which would help explain why the population had apparently fallen from 1.5 to 1.4 million inhabitants.

5. Mr. GARVALOV congratulated Namibia on its frank report that gave detailed information on the country and the human rights situation. As a young State, it was understandable that it would need time to overcome the problems it faced. Namibia had acted promptly, following independence, to adopt a Constitution and legislation criminalizing racial discrimination.

6. Paragraph 5 of the report described the ethnic composition of the population of Namibia. There was undoubtedly a division along racial and ethnic lines. The claim that the black population was made up of seven major linguistic groups might be seen as an attempt to avoid recognizing the ethnic origin and diversity of those groups.

7. The report showed how heavily the legacy of the past weighed on the country. The Government was aware of the need to repeal the racially discriminatory legislation it had inherited, but should remember that any delay in doing so would entrench discriminatory practices in the newly-independent country and would then be harder to deal with. On a more positive note, it was encouraging that the Government had been applying a policy of affirmative action in areas such as education and employment.

8. From the information in the report, it appeared that Namibia was fully complying with article 4 of the Convention. However, there was not enough information on the implementation of article 5 of the Convention. Did married

women still have to have their husband's written permission to acquire or purchase property? Did they also need the approval of their husband or a close male relative to open a bank account? Did such requirements apply only to black women?

9. The report also failed to mention ethnic minorities. It appeared that the Government was reluctant to provide such information, maybe because it saw Namibia as a unitary State and therefore included all blacks in one "majority" group, recognizing only linguistic differences. Were the Herero, Nama/Damara and other groups mentioned linguistic groups or were they ethnically different? Were the Caprivi identified by the fact that they lived in the Caprivi Strip? Information should also be provided on claims by the Herero and Nama that they were being discriminated against by the Ovambo. Similarly, information on the situation of the "Baster group", and as to why its members were being prevented from returning to their traditional land would be welcome.

10. Paragraphs 27, 28 and 29 highlighted the differences between legislation adopted in Namibia since independence and the laws it had inherited. However, Section 18 of the Racial Discrimination Prohibition Amendment Act of 1991 placed a serious obstacle in the way of anyone wishing to institute criminal proceedings under the Act and undermined the role of the courts and their independence.

11. Paragraphs 46 and 47, which asserted that racial discrimination is not a problem of national life, seemed to contradict what was stated in paragraphs 11, 14 and 29, regarding the persistence of discrimination.

12. Mr. SHERIFIS welcomed the report of Namibia, which had followed the general guidelines on the drafting of reports (CERD/C/70/Rev.3). It was encouraging to see the extent of the efforts being made to solve the problems the country faced.

13. Paragraph 6 of the report referred to a World Bank report but did not say when the report was written, so that it was not clear whether the figures showing gross inequalities in the distribution of national income reflected the situation before or after independence.

14. Clarification of how Namibia ensured the participation of all ethnic groups in the social and political life of the nation, in accordance with Article 5 of the Convention, should be provided.

15. Mr. SHAHI said that he appreciated the quality of the report of Namibia and commended the Government on its efforts to remove discriminatory legislation from its statute books. In an era of increasing xenophobia, Namibia was a shining example of racial tolerance.

16. Of particular note were Namibia's measures to deter racial discrimination and, as stated in paragraph 47, the severity of the punishment meted out to persons found guilty of racist acts. However, there were areas in Namibia's legislation that needed to be amended to ensure full compliance with the

Convention. For example, section 18 of the Racial Discrimination Prohibition Amendment Act seriously restricted the right of victims of discrimination to seek redress in the courts.

17. Mr. NUJOMA (Namibia), thanking members of the Committee for their expressions of solidarity and support for his country, said that any questions at the current session would be covered in Namibia's next periodic report.

18. Namibia's policy of national reconciliation, as the cornerstone of Government policy, had enabled the country to maintain peace and stability and had influenced South Africa's democratization process.

19. Namibia's core document, which would shortly be available to the Committee, contained detailed demographic information. Namibia's population totalled some 1.4 million, spread over a largely arid territory of some 824,269 square kilometres, resulting in an average population density of 1.7 persons per square kilometre, one of the lowest in the world. Some 70 per cent of the total population were concentrated in only 5 of the 25 census districts. A major factor in population distribution was the migration of people, particularly the able-bodied, in search of better economic opportunities.

20. The Bushmen were spread throughout the territory and in some areas had become integrated with other communities. In some of the more remote areas, the Government had provided land and established schools and agricultural projects, some of which were run by the Government, and others by NGOs. There were also plans to train those communities in the tourism sector, with a view to generating some income for them.

21. As the Bushmen had the same constitutional right of freedom of movement and settlement throughout the national territory as other nationals, there would undoubtedly be some in Windhoek, but they would probably not be wearing their traditional dress. Identification as Namibians was encouraged whereas identification by tribal or linguistic group was discouraged in the wake of the apartheid policies.

22. On the question of land distribution, the Agricultural Commission Land Reform Act No. 6 of 3 March 1995 allowed the State to acquire agricultural land and land owned by foreign nationals for the purposes of land reform and distribution, particularly to those Namibians most economically, educationally or socially disadvantaged by past discriminatory laws or practices. The Act also provided for the establishment of land tribunals and determined their jurisdiction. The Land Reform Advisory Commission had been established by section 2 of the Act and was composed of representatives of various ministries. The Commission advised the Minister of Land, Resettlement and Rehabilitation on all matters relating to the acquisition and purchase of land. The Government's policy of acquiring land from commercial farmers willing to sell had not been very successful. Nevertheless, a large number of people had already been settled on land purchased in that way. The Government was consequently examining the experience of neighbouring countries with a view to enacting further legislation to force commercial farmers to sell land at a price which it would determine.

23. With regard to the distribution of resources and the steps taken by the Government to raise the living standards of the majority, the National Development Corporation had been established under the auspices of the Ministry of Trade and Industry and provided soft loans for individuals and small businesses engaged in trade, fishing, agriculture, mining, building, brick-making, carpet-making, and so forth.

24. Parliament had criminalized racial discrimination through the Racial Discrimination Prohibition Amendment Act of 1991, section 2 of which was referred to in detail in paragraphs 18 to 20 of the report. Penalties for offences under section 2 were referred to in paragraph 21 of the report and were provided for by the Criminal Code.

25. With regard to the administration of the estates of deceased persons, discussed in paragraphs 11 to 13 of the report, cases where the two systems conflicted were decided by the courts. The Law Reform and Development Commission was currently examining the relevant customary law and legislation of neighbouring countries. Although the law governing the estates of blacks was culturally based, the standardization and progressive harmonization of the two systems was essential, particularly where customary law discriminated against the most vulnerable groups.

26. The "usual marital regime" referred to in paragraph 14 was a marriage in which property was held in common by the spouses unless it was expressly stated otherwise. The Married Persons Equality Bill, currently going through Parliament, would outlaw any discrimination in the property regime by providing for full equality between spouses.

27. The information given in paragraph 15 of the report would be enlarged on in Namibia's eighth report.

28. With regard to paragraph 16, concerning article 3 of the Convention, the 1991 Racial Discrimination Prohibition Amendment Act specifically prohibited and criminalized racial discrimination and the practice and ideology of apartheid. It also prohibited the publication and display of advertisements or notices indicating an intention to perform any act which constituted racial discrimination. It was up to the Prosecutor General to decide whether a prosecution under the Act should take place. Cases in which an organization was accused of unlawfully promoting racial discrimination would be decided by the courts.

29. The Constitution provided for equality and freedom from discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed and social or economic status. Namibians also enjoyed the rights provided for in international instruments recognized by Namibia. There was no discrimination in Namibia based on national origin. Foreign nationals lived and worked in Namibia freely, provided that their stay in Namibia was duly authorized.

30. With regard to article 6, he said the State-sponsored legal aid scheme was available to indigenous peoples on request. Magistrates and judges were obliged to inform suspects and arrested persons of their right to legal aid

under the 1991 Legal Aid Act. The same information was provided in the remote areas by magistrates offices and by the Ombudsman on his routine visits. NGOs also played an important role in the dissemination of such information.

31. On the question of available remedies, the Ombudsman might recommend action to Parliament which might in turn make appropriate recommendations or take appropriate action.

32. The fact that there had been only one prosecution for racial discrimination did not imply that the number of such acts had declined, but rather that people were afraid to take cases to court or were unaware of their rights, particularly in respect of the availability of legal aid.

33. The protection afforded under section 11 of the Constitution was broader than provided for in the Convention and there was no intention to reduce its scope. The issue would be expanded upon in Namibia's next report.

34. Under section 18 of the 1991 Racial Discrimination Prohibition Amendment Act, in cases where the Prosecutor-General refused to prosecute, a private individual could institute a private prosecution and apply for legal aid. In cases of discrimination by one individual against another, it was up to the individual to take the matter to court. The Government discouraged all discriminatory practices in sport, recreation, education and cultural activities. Where difficulties persisted, it was possible to propose amendments to section 18.

35. Mr. SHERIFIS, referring to the statement that persons might be unaware of their rights in Namibia, asked whether the Convention was published in that country, whether Namibia's report had been publicized in any way and whether the concluding observations of the Committee and the summary records of the discussions would be published.

36. Mr. WOLFRUM, referring to the question of identification as Namibians above all else, said that although he fully understood that policy, a country had an obligation under article 1 (4) and article (2) of the Convention to improve the situation of groups with an inferior status. That obligation could not be fulfilled unless such groups were identified and their needs assessed.

37. Mr. DIACONU, referring to paragraphs 11 to 14 of the report, said that Namibia was taking the right approach to eliminating discriminatory legislation. As far as article 4 of the Convention was concerned, the Government needed to reflect further on its current legislation.

38. Mr. CHIGOVERA said that the Committee would be particularly interested in receiving the text of the 1991 Racial Discrimination Prohibition Amendment Act, which might be re-examined in the future with a view to incorporating into it the prohibition of discrimination on tribal or ethnic grounds, given the ethnic diversity of the population.

39. Details of any affirmative action legislation passed under section 23.2 of the Constitution and of any concrete measures taken pursuant to such legislation would also be useful, as would details of the 1995 Traditional

Authorities Act and its impact on the land rights of the traditional communities. In that connection its impact on the Bushmen would be of special interest, as they appeared to be the only group in Namibia without pension rights due to the fact that they lacked documents proving identity or nationality. The Committee would be interested to know what steps the Government was taking to rectify that situation. Information on the Cultural Land Reform Act and on land distribution measures taken as a result should also be provided.

40. Mr. ABOUL-NASR said that he was against the identification of racial, ethnic or religious groups in any country, particularly bearing in mind the results of such identification in the past. The fact that some groups were not recognized was clearly a problem which the Committee needed to reflect on in the future.

41. Mr. WOLFRUM said that identifying an individual as belonging to a certain group was a violation of the Convention. However, Governments needed to respond to self-identification, on which the Committee had once passed a general recommendation, in order that persons so identified might participate in public affairs and benefit for example, from the distribution or redistribution of land and pension schemes.

42. The CHAIRMAN thanked the representative of Namibia for his replies and expressed the hope that the occasion would mark the start of a lasting dialogue.

43. The representative of Namibia withdrew.

Tenth, eleventh, twelfth and thirteenth periodic reports of Venezuela (CERD/C/263/Add.8/Rev.1 and HRI/CORE/1/Add.3) (continued)

44. At the invitation of the Chairman, the delegation of Venezuela took seats at the Committee table.

45. Mr. CHIGOVERA said that article 61 of the Venezuelan Constitution, referred to in paragraph 3 of the periodic report (CERD/C/263/Add.8/Rev.1) made no reference to discrimination based on colour, descent or ethnic origin. The Government might therefore consider re-examining that article with a view to ensuring full compliance with article 1, paragraph 1, of the Convention.

46. Census data quoted in the United States Department of State Report on Human Rights Practices for 1994 showed that in 1992, 40.5 per cent of the indigenous population over the age of 10 was illiterate, 65 per cent of indigenous communities had no schools and 63.8 per cent had neither a school nor a dispensary. Assuming that information to be correct, he asked the delegation to comment on whether the indigenous peoples were realizing their right to education and whether that right was accompanied by a duty on the part of the State to ensure the indigenous population's access to education. The reported low literacy rates and absence of medical facilities among the indigenous population also raised questions about the ability of that population to enjoy the constitutional rights referred to in paragraphs 25 and 40 of the report. Was the Government taking concrete measures to address the situation? He asked for information on the composition of the Office of

Indigenous Affairs of the Ministry of Education, referred to in paragraph 33, and whether members of the indigenous communities were involved in the running of the Office.

47. Considering the importance attached to Decree No. 283 containing a plan for intercultural bilingual education (paras. 43 and 44), he invited comment on the observation in a report of the Indigenous National Council of Venezuela (CONIVE) that the Ministry of Education had until now shown no interest in implementing the Decree. The same report indicated that only 17 per cent of indigenous communities had legal documents accrediting the ownership of their lands. He asked for explanations, especially in the light of the Agrarian Reform Act, referred to in paragraph 53 of the periodic report. What steps was the Government taking to regularize the land rights of the indigenous population?

48. Regarding the statement in paragraph 77 of the report, in connection with article 4 of the Convention, that there was no need to legislate as Venezuela had no problems of discrimination or justification of discrimination, he said that States parties had a binding obligation to take the measures provided for under article 4. As to whether there was any justification for such legislation, the Country Rapporteur had already referred to incidents of violence against the indigenous population and he himself had referred to their poor literacy levels and economic conditions and lack of basic health care and other amenities. He also drew attention to a 1994 newspaper report about a riot in a Venezuelan prison, resulting from inter-ethnic conflict, leaving 103 dead and 45 wounded.

49. Mr. van BOVEN noted that Venezuela was not one of the many countries that claimed that racial discrimination within the meaning of the Convention did not exist in their territory. Observing that the Convention was to date the international human rights instrument with the most bearing on the rights of indigenous populations, he noted that a substantial part of the periodic report was devoted to that subject. He drew attention to article 1 and, in particular, article 2, paragraph 2, of the Convention, specifying that the "special" measures referred to therein amounted to affirmative action or preferential measures on behalf of disadvantaged groups, in order to ensure full equality. The list in paragraph 59 of the report retracing the measures and legislation adopted over the years was much appreciated. He would be interested to know whether the process of ratification of ILO Convention No. 169, described as being "currently under consideration" in 1989, had now been completed. If so, it would be an important step forward, as that Convention represented a considerable improvement over ILO Convention No. 107. The reason for his question was that the Indigenous National Council of Venezuela had reported objections by the Venezuelan Government to the revision of the earlier Convention. The Council had also reported that the draft Law of Indigenous Peoples and Cultures, still under deliberation by the Chamber of Deputies, had been drafted without the participation of the indigenous population and had not been given much priority. Could information be provided on the state of progress? Reports from the same source about the high mortality rate among the indigenous population and their lack of access to medical care confirmed his suggestion

that affirmative action was needed. He expressed concern about the Council's report that ultra-fundamentalist religious missions such as Nuevas Tierras and the Adventistas denied, prohibited and distorted virtually all the cultural manifestations of the indigenous communities and imposed a very absolute form of evangelism. Such a situation might require measures under article 4 of the Convention, but he acknowledged that it was a highly sensitive issue, with no ready solutions.

50. He asked whether the Venezuelan Government was planning to make the declaration under article 14 of the Convention, whether it would consider ratifying the amendments to article 8 of the Convention concerning methods of financing the Committee, and to what extent the Convention, the rights it covered, the report to the Committee and the latter's observations, were publicized in Venezuela.

51. Mr. ABOUL NASR pointed out that the United Nations had proclaimed the years 1994 to 2004 the International Decade of the World's Indigenous People. The question of the Committee's contribution to the Decade, on which it had not been consulted, might well be taken up by the Chairman at the forthcoming meeting of persons chairing the human rights treaty bodies.

52. In its report, Venezuela had dealt frankly with some of the complex issues involving indigenous populations. The general approach to the question of indigenous populations and their rights had evolved over the years. The first step had been to secure recognition of such populations by the international community and the countries in which they lived, and acknowledgement of the crimes and injustices of the past. Such acceptance was now widespread, and could be seen in the reports of States parties to the Convention, among them Venezuela. In addition, many countries with indigenous populations, including Venezuela, had made efforts to put an end to some of the discrimination of the past by enacting enforceable legislative measures and taking other steps to remedy some of the problems faced and ensure equal treatment. There was now a recognition of the right to be different, the right of indigenous peoples to their own culture, religion and way of life, and their right not to be subjected to the imposition of alien standards.

53. As yet, however, no country had considered compensation for the losses suffered by indigenous peoples - the land which had been taken (even though the "contracts" justifying the land transfers were widely considered to be null and void), the gold and silver which had been looted and the culture which had been destroyed. Apologies and attempts to improve health care or education were not an alternative to adequate compensation. Perhaps the Committee could make some statement on the right to compensation as its contribution to the International Decade. Did the Venezuelan delegation have any ideas to offer?

54. He wished to dissociate himself from the persistent inquiries made by some other members about the intention of States parties to allow individuals to address their complaints to the Committee, as provided for in article 14, paragraph 1. States parties were within their rights in deciding not to make the declaration provided for in that article.

55. Mr. DIACONU, noting that the statistics in Brazil's report (CERD/C/263/Add.10) distinguished three groups (White, Black and Coloured), with a separate chapter on indigenous peoples, and that Bolivia's report (CERD/C/281/Add.1) provided social indicators for the indigenous population, said he would have welcomed similar information from Venezuela.

56. The Committee's main concern was the social and economic situation of indigenous peoples in Venezuela, and the risk of violation of their rights posed by the operations of large mining and timber companies and livestock breeders. There had also been allegations that the largest ethnic group in the State of Amazonas had not been able to participate in the drafting of the State constitution. He would welcome further information on those points. Bolivia had established indigenous areas governed by special legislation: had Venezuela established anything similar?

57. He considered that, at present, the domestic legislation of Venezuela did not adequately implement article 4 of the Convention. New legislation was needed to specifically prohibit acts of racial discrimination and organizations practising or advocating it. For instance, the activities of certain religious organizations in indigenous areas, which sought to eradicate the indigenous people's cultural practices, appeared to constitute acts of racial discrimination and ought to be punishable under the law.

58. He asked whether indigenous people had full access to the justice system and to the constitutional remedy of amparo. Did the courts use indigenous languages or were interpreters provided?

59. Mr. YUTZIS said that, in his opinion, there were differences between Latin American countries. In countries such as Bolivia, Peru and Mexico, indigenous people still accounted for a large proportion of the population, whereas countries such as Argentina had fewer indigenous people and more people descended from European immigrants or Black slaves, which had eventually led to a mixed-race society.

60. The economic situation of Venezuela was currently relatively favourable, but it was important to ensure that all population groups reaped the benefits of that prosperity on equal terms.

61. The Venezuelan representative had referred to a law on indigenous communities, which was currently being considered by the Chamber of Deputies. He hoped that the law would help to coordinate the various activities on behalf of indigenous peoples, which were currently the responsibility of many different agencies.

62. He had been surprised by the reference in paragraph 28 of the report to "concerns expressed by several delegations in the General Assembly". Did that refer to the latest session of the General Assembly, in 1995?

63. Paragraph 32 and several others referred to "continuing education". He asked for statistics about the places where such education was provided and the rate of participation of indigenous people, as well as details of places

where the "bilingual, intercultural curriculum" referred to in paragraph 45 was actually in use. Where were the "intercultural educational institutions" referred to in paragraph 47? He would also welcome data about the use of indigenous languages in education.

64. Paragraph 59 referred to "special educational services for the indigenous population" established under article 51 of the Basic Education Act. He asked for more details of those services and where they were provided. He was sure that the Venezuelan Government monitored its policies in some way, and detailed statistics and examples were very useful to the Committee.

65. He asked the Government to expand, in its next report, on the statement in paragraph 51 that "small indigenous groups" were allowed to consume the hallucinogenic substance yopo during magical religious ceremonies. Did the phrase refer to members of small indigenous communities, or to small numbers of people at any one time?

66. Paragraph 53 dealt with the very significant issue of land rights. He asked how many land titles had been granted to members of indigenous groups, and whether they had been granted to individuals or to whole communities. He had obtained reports of indigenous communities which had been fighting to regain their land rights for many years; he would like to know how many disputes there had been involving the land rights of indigenous peoples.

67. In Venezuela, as in many other countries, increasing numbers of rural inhabitants were moving to the cities to seek work and better living conditions. What measures had the Venezuelan Government taken to protect indigenous people in that situation? He would also welcome details about measures taken to help the Yanomami people of the upper Orinoco region, whose traditional lands had been devastated by floods.

68. The activities of religious organizations were a sensitive issue. Research had shown that ethnic minorities sometimes voluntarily adopted the religious beliefs of the majority because they felt they had something to gain by so doing: it was not always fair to accuse the majority religions of exerting undue pressure. How did the Government strike a balance between the need to protect indigenous peoples from possible abuses on the part of religious groups, including such well-known denominations as the Seventh-Day Adventists, and the right to freedom of conscience?

69. Mr. SHERIFIS asked for statistics showing the results of the measures to protect and promote the interests of indigenous peoples, such as the percentage of illiterates among indigenous people and their representation in the Government, the legislature, the judiciary and the diplomatic service.

70. He commended the Venezuelan Government on the measures it had taken to conduct censuses of the indigenous population (para. 27 of the report) and guarantee freedom of movement (para. 89) and its condemnation of all forms of racial segregation (para. 68). However, like other members, he considered that Venezuela was not adequately implementing article 4 of the Convention.

71. He noted that Venezuela had no plans to make the declaration provided for in article 14, paragraph 1 of the Convention, but had recognized the competence of the Human Rights Committee to consider communications from individuals by ratifying the Optional Protocol to the International Covenant on Civil and Political Rights.

72. Finally, he asked whether the Government supported the proposed amendments to the Convention relating to the financing of the Committee's activities and whether the Government publicized the provisions of the Convention, the Government's reports to the Committee and the Committee's concluding observations within Venezuela.

The meeting rose at 1.05 p.m.

UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1171
14 November 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1171st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 August 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE OF THE CONVENTION (continued)

Fourth to fourteenth periodic reports of Swaziland

Third to tenth periodic reports of Zaire

Draft general recommendation on compensation

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria (continued)

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (continued)

Seminar to assess the implementation of the Convention

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.96-17836 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 9) (continued)

Fourth to fourteenth periodic reports of Swaziland (CERD/C/299/Add.2)

1. The CHAIRMAN said that Swaziland had requested that consideration of its reports should be postponed until the Committee's next session. He said that if there were no objections, he would take it that the Committee agreed to that request.

2. It was so decided.

Third to ninth periodic reports of Zaire (CERD/C/237/Add.2); Tenth periodic report of Zaire (CERD/C/278/Add.1)

3. At the invitation of the Chairman, Mr. Marume Mulume (Zaire) took a place at the Committee table.

4. Mr. MARUME MULUME, introducing his country's two reports (CERD/C/237/Add.2 and CERD/C/278/Add.1), said that, after many years of difficulties and crises during which it had not attended the Committee's meetings, Zaire had broken with the single party system in 1990 and initiated a process of democratization. The process itself involved specific difficulties, which compounded existing ones and created a political, economic and social climate that made the situation of the weakest, whom the various human rights conventions were designed to protect, even more precarious. The Zairian authorities hoped that the Committee's observations would help it to carry out that task of protection.

5. The Republic of Zaire was pleased to resume the dialogue with the Committee. Last-minute material problems had prevented the planned delegation from leaving Kinshasa, but he would do his best to answer the questions asked. Any replies he was unable to provide would be transmitted to the Committee at a later date.

6. Mr. van BOVEN (Country Rapporteur) said he hoped that the dialogue between Zaire and the Committee, which had resumed after a 16-year break, would be fruitful. The two reports under consideration (CERD/C/237/Add.2, submitted in 1995, and CERD/C/278/Add.1, submitted in 1996) were virtually identical; he would therefore refer only to the second. The main innovation it mentioned was the adoption and promulgation, on 9 April 1994 of a provisional constitution called the "Constitutional Act of the Transition Period" (CERD/C/278/Add.1, para. 4). The transition period had been due to end on 9 July 1995, but it had been extended. He asked whether the Act in question was really "transitional". The report on which the dialogue between Zaire and the Committee would be based essentially provided information on current legislative measures, but contained little information on the actual situation. It contained hardly any information on the political/constitutional situation, scant geographical and demographic data and no statistics. Moreover, no core document had been provided. To remedy that shortcoming, he had drawn on other relevant United Nations documents:

two reports on the human rights situation in Zaire submitted by Mr. R. Garretón, Special Rapporteur on the situation of human rights in Zaire, containing, in particular information on ethnic rivalry and incitement to racial hatred, and two recent reports by the United Nations High Commissioner for Human Rights: "Coordination meeting on the human rights situation in the Great Lakes region" (E/CN.4/1996/69) and "Making human rights a reality" (E/CN.4/1996/103).

7. Following the influx of refugees from Rwanda and Burundi, the situation in Kivu deserved special attention. In resolutions 1995/69, 1996/76 and 1996/77, the Commission on Human Rights had expressed its concern. According to the Special Rapporteur, ethnic tension had been exacerbated by factors connected with the electoral process and the nationality laws.

8. With regard to the implementation of article 2 of the Convention, Zaire's report contained a great deal of information on current legislative provisions, but hardly any on their application. As far as nationality was concerned, the report referred to the principle of jus soli. According to the Special Rapporteur, one of the main causes of the ethnic conflict in North Kivu was the legislation on nationality and, in particular, Act No. 81-002 of 29 June 1981. In his second report, the Special Rapporteur made recommendations in that regard. He asked whether the Government of Zaire had taken or intended to take any follow-up measures on those recommendations and in what way and by what means integrationist multiracial organizations were being encouraged (CERD/C/278/Add.1, para. 16). He also asked how the political division into "families", which distinguished between "the President's family" and "the opposition family", and was provided for in the Constitutional Act of the Transition Period, was compatible with access by all, without discrimination, to the civil service. He wished to know how the multi-ethnic nature of Zairian society described in the report was compatible with the reports of "regional cleansing" in Shaba that was encouraging the population of Shaba to expel the 1.5 million Kasai people living there.

9. As to the implementation of article 3, he pointed out that that provision was not simply an anti-apartheid clause. It related to any policies and practices, whether intentional or unintentional, of racial or ethnic segregation, as the Committee had stated in its General Recommendation No. XIX, adopted at its forty-seventh session.

10. With regard to the implementation of article 4, the Committee would appreciate details on the effective implementation of the legislative provisions referred to in paragraphs 28 and 29 of the report and on the relevant case law. According to the report, tribal associations that were political in nature were prohibited and automatically dissolved (para. 29). Such associations nevertheless seemed to exist for the express purpose of supporting the President of the Republic and they apparently received public funds for that purpose. He asked whether that was compatible with Ordinance Law No. 66/342. He recalled that the Cairo Declaration on the Great Lakes region, which had been adopted on 29 November 1995 by the Heads of State concerned, and in particular by President Mobutu, had condemned an ideology of exclusion which fomented fear, frustration and hatred and encouraged

tendencies towards extermination and genocide. He asked what measures had been taken to change the attitude of Zaire's political forces towards persons from Rwanda and Burundi.

11. Regarding the implementation of article 5 (b) of the Convention on the right to security of person, the legislative provisions referred to in paragraphs 34 to 37 of the report were excellent. However, they contrasted with the information provided by the Special Rapporteur, who reported on "deaths through failure to perform the duty to protect life during tribal or regional conflicts" (E/CN.4/1996/66, paras. 73 and 74). He asked what measures had been taken to prevent practices such as those described by the Special Rapporteur and to punish the persons responsible and what remedies were made available to groups and individuals who were the victims of such practices. Referring to the implementation of article 5 (c) of the Convention (Political rights, paras. 38 and 42 of the report), he asked for further information on persons who did not vote (Electoral Act No. 82/007 of 25 February 1982, art. 14) and, in particular, on the grounds on which a person could be "excluded from the electorate". In connection with the implementation of article 5 (d) of the Convention (Other civil rights), paragraphs 44 and 45 of the report stated that persons responsible for arbitrary arrests were punished by law and that remedies were available to their victims. The Special Rapporteur nevertheless reported many cases of arbitrary arrests. The report contained little information on the implementation of article 5 (e) of the Convention (Economic, social and cultural rights). As to the right to education, the Special Rapporteur indicated that only 2 per cent of the national budget was spent on education and that the State failed not only to provide free primary education, but also to maintain schools and pay teachers' salaries regularly, thereby contributing to a drop-out rate of as much as 75 per cent.

12. As far as the implementation of article 6 was concerned, paragraphs 64 to 67 of the report showed that the equal rights of Zairians and foreigners and their protection were guaranteed by law. However, it was important to know whether those principles applied to all Zairians, regardless of their ethnic and national origin and to what extent the population was informed of the remedies available. There was also uncertainty about the independence of the judiciary, whose precarious status had been emphasized by the Special Rapporteur of the Commission on Human Rights.

13. Referring to the propagation of international human rights instruments, as required by article 7 of the Convention, he asked what measures had been taken, in conformity with article 35 of the Constitution, to ensure the dissemination of the Convention. He also asked whether the Committee's conclusions following its consideration of Zaire's report would also be disseminated. What concrete measures had been taken to provide general human rights teaching, in particular for law enforcement officials, in conformity with the Committee's General Recommendation XIII? With regard to the State party's observance of the principle of tolerance also embodied in article 7 of the Convention, he shared the view of the Special Rapporteur of the Commission on Human Rights that the Government should stop seeing enemies where there were none, using aggressive language against peoples of Rwandan and Burundian

origin and denigrating one ethnic group in the eyes of others. He asked whether Zaire was prepared to make the declaration provided for in article 14 of the Convention.

14. It was clear that the massive influx of Rwandans and Burundians to Zaire caused problems. According to the report by the High Commissioner for Human Rights on the coordination meeting on the human rights situation in the Great Lakes region (E/CN.4/1996/69), the influx had kindled the xenophobia which already existed in the North and South Kivu regions. For his part, the Special Rapporteur of the Commission on Human Rights had expressed the view that the situation created by the tribal tension was explosive. For those reasons, the initiative taken by the High Commissioner for Human Rights, as an act of preventive diplomacy, to open a United Nations human rights office in Kinshasa to cooperate with the national authorities and with NGOs should be welcomed. Although the Commission on Human Rights had supported the project and the High Commissioner had spared no effort successfully to complete it, certain elements were apparently opposed to the opening of the office. He invited the Zairian authorities to say when the office would become operational.

15. Lastly, international law required Zaire to cooperate with the International Tribunal for Rwanda and arrest persons accused of genocide in order to hand them over to the Tribunal. He asked what the Government of Zaire had done to fulfil those obligations.

16. Mr. ABOUL-NASR, speaking on a point of order, said that, as the Country Rapporteur, Mr. van Boven, had made extensive use of the reports by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Zaire, he should provide the symbol and date of those documents, with which he himself was unfamiliar. He asked whether the reports had been considered by the Commission on Human Rights, whether Zaire had replied to the allegations contained in them and whether the Commission on Human Rights had taken a decision on them. The Committee should not repeat a debate which had already taken place within the Commission on Human Rights.

17. Mr. van BOVEN said that Mr. Aboul-Nasr had raised an interesting point about the Committee's sources of information. He had naturally used the State party's periodic reports, but, when they had not contained enough factual information on matters of interest to the Committee, he had drawn on the two reports prepared by the Special Rapporteur of the Commission on Human Rights, Mr. Garretón. The first had been issued as document E/CN.4/1995/67, dated 23 December 1994, had been considered by the Commission and had led to a resolution. In view of the Commission's heavy programme of work, however, he could not say whether the Commission had held a debate on the document that would be reflected in the summary records. The second report had been issued as document E/CN.4/1996/66, dated 29 January 1996. Mr. Garretón, who had prepared those reports after visiting Zaire, was preparing a third report and his mandate should be renewed. He had not used information from external sources and was unaware of any statements on the reports that the State party might have made in the Commission on Human Rights.

18. Mr. GARVALOV welcomed the resumption of the dialogue between Zaire and the Committee after so many years. He did not fully agree with the views of the Special Rapporteur of the Commission on Human Rights, Mr. Garretón, on the human rights situation in Zaire.

19. The two periodic reports on Zaire before the Committee (CERD/C/237/Add.2 and CERD/C/278/Add.1) were in keeping with the Committee's guidelines and contained useful information, in particular on the Constitutional Act of the Transition Period, which had been adopted and promulgated in April 1994 and article 11 of which stated that all Zairians were equal before the law and condemned discrimination. However, the information contained in paragraphs 2, 8 and 23 of the tenth report (CERD/C/278/Add.1) on the ethnic composition of the population was inadequate and required clarification. He asked whether the terms "tribes", "ethnic groups", "minority groups" and "pluriethnicity" used in those paragraphs had the same meaning and which of the ethnic groups mentioned in paragraph 2 were the largest.

20. With regard to the question of nationality dealt with in paragraphs 11 to 14 of the report, Zairian legislation seemed to be "generally liberal", since it was based on jus soli, which was less restrictive than jus sanguinis. However, the statement in paragraph 30 that Zairian legislation predating the Convention fully met concerns about the elimination of all forms of discrimination apparently meant that the State party could not see how its legislation could be improved. Such a statement, which had already been made by other States parties, required closer scrutiny in the light of the actual situation. It should be remembered that, according to article 4 of the Convention, States parties undertook in particular to declare an offence punishable by law any incitement to racial discrimination as well as all acts of violence against any race or ethnic group.

21. The three legal instruments referred to in paragraph 9 of the report on the suppression of manifestations of racism, the prohibition of discrimination in public places and the prohibition of tribalism, were much narrower in scope than required not only by article 4, but also by article 2 of the Convention.

22. The report also contained interesting and fairly detailed information on Zaire's recognition of some rights provided for in article 5 of the Convention, especially civil rights, but the real state of affairs was a matter of concern. The information provided by major international NGOs showed that, as a result of extrajudicial executions, arbitrary arrests, censure, discrimination against the Pygmies and the inferior status of women, the situation in Zaire was serious. The Zairian delegation should say whether those reports, which were particularly disturbing, should be dismissed or could, unfortunately, be confirmed. It would also be interesting to know how many people had instituted proceedings before a court, as stated in paragraph 45, to contest the lawfulness of their detention and in how many cases the courts had ruled that the detention was unlawful. Paragraph 66 stated that criminal law penalized all discriminatory practices and provided damages for the victims, but he wished to know how many complaints of discrimination had been brought before the courts and in how many of those cases damages had been awarded. Lastly, it was stated in paragraph 69 that

human rights should be included in all educational and training programmes for the armed and security forces; he asked whether human rights were also taught in schools and, if so, what such teaching involved.

23. Mr. de GOUTTES said that the resumption of the dialogue between the Committee and Zaire after a 16-year break should be welcomed. The Country Rapporteur, Mr. van Boven, had made a penetrating analysis of Zaire's problems by referring to recent information from other United Nations bodies and, in particular, the reports of the Special Rapporteur of the Commission on Human Rights and of the High Commissioner for Human Rights. The situation in Zaire was crucial, as the stability of an entire region of Africa depended on it, and the idea of opening a United Nations human rights office in Kinshasa was particularly welcome.

24. Generally speaking, the reports on Zaire that were submitted to the Committee contained useful information on the institutional and legislative framework to combat racial discrimination and particularly on the adoption, on 9 April 1984, of the Constitutional Act of the Transition Period and the establishment, on 8 May 1995, of the National Commission for the Promotion of Human Rights, but they did specific information on and practical examples of the implementation of the texts referred to and did not reflect the real problems that Zaire faced in a number of areas. As far as the refugees were concerned, the Government of Zaire had been criticized, on the one hand, for having refused to shelter many refugees from Burundi in the South Kivu region and, on the other, for having subsequently forcibly expelled a large number of Rwandan and Burundian refugees whose presence threatened national security. He asked for quantitative and qualitative information on the situation of those refugees and on the conditions they were living in in the camps in Zaire.

25. Referring to inter-ethnic tension, the 1996 report of Amnesty International referred to violent incidents involving different ethnic groups (Banyarwandas, Hundes, Nandes and Nyangas). The Government of Zaire had to provide information in that regard. In the case of the Banyarwandas, he asked whether it was true that the new retroactive legislation on the acquisition of Zairian nationality, to which Mr. van Boven had already referred, was one of the main causes of the conflicts. He pointed out that, under article 1, paragraph 3, of the Convention, none of its provisions could be interpreted as affecting in any way the legal provisions of States parties concerning nationality, "provided that such provisions do not discriminate against any particular nationality".

26. Paragraphs 9 and 27 to 31 of the tenth report also referred to three major texts which, under Zairian domestic law, made it possible to penalize and punish racist acts and, according to the Government, that placed Zaire "in the forefront" of the struggle against racial discrimination. Although Zairian legislation was on the whole in keeping with the requirements of article 4 of the Convention, there was no information on the practical implementation of those provisions in the light not only of article 4, but also of article 6. As Mr. Garvalov had said, the next report should provide information on complaints, proceedings and convictions, with statistics, if possible. The delegation should also explain whether citizens were well informed of their rights and whether they trusted the police and the courts.

27. Paragraph 4 of the report referred to the recently established National Commission for the Promotion of Human Rights, but gave no information on how it operated, its composition, the machinery that ensured its independence and any action to its credit. In that connection, it would be interesting to know whether the Commission had participated in the seminar organized in Yaoundé in February 1996 for national commissions from all parts of Africa.

28. Paragraph 16 stated that multiracial, integrationist organizations were encouraged, but did not explain how. According to Amnesty International, the Government had, rather, reintroduced a provision requiring any human rights movement to obtain prior legal recognition. Five groups of activists had allegedly complained to the Commission on Human Rights of that provision, which was contrary to the 1994 Constitutional Act. He asked the Zairian delegation whether the Government planned to publish its tenth report and the Committee's conclusions. That would be an example of goodwill towards the Committee and a paedogogical approach to tolerance.

29. Mr. VALENCIA RODRIGUEZ asked whether article 11 of the 1994 Constitution might not pave the way for discrimination in most of the areas referred to in article 5 of the Convention, since it apparently prohibited discrimination only "in matters of education or access to the civil service".

30. The information on the implementation of article 2 provided in the tenth report led him to wonder whether a foreigner who became Zairian received the same treatment as Zairians by birth. Moreover, the statement in paragraph 15 that "Zairian laws generally look kindly upon foreign nationals" made him fear that there might be exceptions and that aliens might be protected only in terms of their "person and property", as indicated in paragraph 6.

31. The statement in paragraph 23 that concern for minority groups and for pluriethnicity had always been a part of Zairian policy was very encouraging. Unfortunately, there were no explanations of what happened in practice. The Committee should be informed of any special measures which had been or were being adopted to protect minorities and, above all, to improve their living conditions.

32. Referring to the implementation of article 4 of the Convention, he said that the measures provided for by the three texts quoted in the report, which penalized the wearing of emblems and gestures, words or writings liable to cause racial tension and segregation in public places, were not broad enough to give effect to the article, whose aims were far higher. The legislation should be supplemented and combined in a single text.

33. According to the information provided on the implementation of article 6, foreigners were entitled to the same protection as Zairian citizens against discriminatory practices or measures. That was commendable, but the information should be supplemented by details of the legal machinery guaranteeing the exercise of that right. It was surprising that no case of discrimination had yet been brought before the courts.

34. Regarding article 7, he found the report rather wanting. The article covered education, culture and information, a very broad area that required very diversified action. For example, the Committee should be told whether

the authorities were trying to make information on the Convention and the Committee's work on Zaire available to the entire population, without exception.

35. Mrs. SADIQ ALI, referring to a number of incidents reported by reliable sources, requested information on discrimination by the National Electoral Commission against the moderate opposition and the Islamic Conscience Movement, which had asked to be allowed to represent the 10 million Zairian Muslims. Those groups' protests were proof of tension in Zaire, despite the adoption of the Constitution in late June 1990.

36. In 1994, the radical opposition had denounced Zaire's political instability and its economic decline, which it held responsible for the impoverishment of the health sector, which was now dependent on humanitarian assistance. She was surprised that so rich a country should be reduced to such a state and wondered whether it was because it preferred to spend its resources on military expenditure.

37. Referring to a report that more than 11,000 Zairians had taken refuge in Uganda since January 1994, she asked why that huge exodus had occurred and whether it had been caused by the new law on naturalization.

38. According to other reports, members of the presidential guard had killed approximately 50 students and schoolchildren during demonstrations against President Mobutu Sese Seko at Lubumbashi in 1990. Belgium had then suspended its loans to its former colony and postponed the signing of a cooperation agreement with it and had requested the International Commission of Jurists to carry out the necessary investigations. She asked whether an investigation had been made into that incident. It had been followed by other disturbances - students fleeing to Zambia, miners striking in Lubumbashi, etc. - and by a further appeal from the European Community for an independent inquiry. The situation was still tense and she asked what the Government was doing to restore order.

39. Mrs. ZOU said that she deplored the lack of information and precise figures on the implementation of the legislation adopted by Zaire. For example, the provisions relevant to article 4 of the Convention were described at length, but no specific example was given.

40. She noted that there were approximately 250 tribes in Zaire - 4 or 5 of which predominated - and asked what measures had been taken to prevent conflicts between them, since tribal antagonism could be the starting-point for major crises.

41. Mr. SHAHI said that, since the Rwandan crisis had begun, there had been reports that some of the persons who had taken refuge in Zaire had formed gangs which organized raids against Rwanda. He asked how the Government of Zaire interpreted its responsibilities under international law in respect of those incidents and what it was doing to remedy the situation.

42. Mr. Marume Mulume (Zaire) withdrew.

Draft recommendation on compensation

43. The CHAIRMAN invited the Committee to consider the question of a draft general recommendation on compensation for indigenous populations subjected to racial discrimination.

44. Mr. WOLFRUM, referring to a suggestion by Mr. Aboul-Nasr, proposed that States in whose territory indigenous populations had been subjected to discrimination and violence should present them with their excuses, work to preserve the cultural identity of indigenous groups as a source of cultural enrichment and to improve the situation of indigenous populations in terms of civil, political, economic, social and cultural rights and, lastly, give back the land that had belonged to indigenous individuals or groups or compensate them. A small group of experts could draft that recommendation.

45. The CHAIRMAN said that Mrs. Sadiq Ali, Mr. van Boven and Mr. Aboul-Nasr had volunteered to carry out that task.

46. Mr. van BOVEN suggested that the drafting group that had just been established should study ILO Convention No. 169 on indigenous and tribal peoples and the draft declaration on the rights of indigenous populations currently being considered by the Commission on Human Rights.

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria (CERD/C/49/Misc.3/Rev.3) (continued)

47. Mr. WOLFRUM, drawing the Committee's attention to the document entitled "General recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria" (CERD/C/49/Misc.3/Rev.3) (document distributed in the meeting room in English only) and to the amendments on which the members of the Committee had agreed, said that the fourth preambular paragraph, beginning with the words "Draws the attention", became paragraph 1. The paragraph beginning with the words "Emphasizes that" became paragraph 2. The former paragraph 1 became subparagraph (a). In that subparagraph, the word "such" should be added between the words "all" and "refugees". The former paragraph 2 became subparagraph (b). In that subparagraph, the words "the obligation of" should be deleted and the words "are obliged" added before the words "to ensure". The word "such" should be added before the word "refugees" in the second line of that subparagraph. After the words "is a voluntary one", the comma should be replaced by the word "and". The former paragraph 3 would become subparagraph (c). In that subparagraph, the word "such" should be added between the words "all" and "refugees". The former paragraph 4 would become subparagraph (d). In that subparagraph, the word "such" should be added between the words "all" and "refugees".

48. A representative of the Office of the United Nations High Commissioner for Refugees (UNHCR) had considered the document and it was at his suggestion that the third preambular paragraph, beginning with the word "Recalling" had been added to the draft recommendation. The representative of UNHCR had also insisted that the principle of non-refoulement should be referred to, as the draft recommendation now did.

49. Mr. GARVALOV said he hoped that the Committee would have a further opportunity to consider the document because he wanted to propose the amendment which he had suggested before and which was that the words "non military" should be added to the first preambular paragraph. As the members of the Committee had not supported that proposal, he wished to explain why it was so important.

50. Mr. DIACONU said that, in the first preambular paragraph, it would be more appropriate to refer to "military or ethnic conflicts" because there were ethnic conflicts that were in no way military. He also proposed that the words "against their will" should be added after the word "displaced".

51. Mr. CHIGOVERA, referring to the first amendment proposed by Mr. Diaconu, suggested that the word "/or" should be added after the word "and".

52. The CHAIRMAN said that the Committee would continue its consideration of the draft recommendation at a later meeting.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 8) (continued)

Seminar to assess the implementation of the Convention

53. Mr. WOLFRUM said that the Seminar was due to be held from 9 to 13 September 1996 to assess the implementation of the Convention. In his view, the programme for the Seminar amounted to an assessment of the Committee's action. He was glad that Mr. Rechetov and Mr. Valencia Rodriguez were taking part in the Seminar, but very sorry that the Committee had been completely left out. It might even be said that it was entitled to be heard because, otherwise, its rights would be violated. In addition, the relevant resolution specified that such seminars should be monitored by the treaty monitoring bodies.

54. He proposed that the Head of the Advisory Services, Technical Assistance and Information Branch, Mr. Pace, should inform the Committee about the Seminar and explain why he had not done so earlier.

55. Mr. SHAHI said that he joined in Mr. Wolfrum's protest. The Committee should be able not only to explain its action, but also to inform the Seminar's participants of the experience it had gained since its establishment almost 30 years previously.

56. Mr. GARVALOV said that, if the Seminar had been on racial discrimination in general, he would have had no objection, but as the theme was the assessment of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee should, at the very least, have been consulted. He therefore supported Mr. Wolfrum's proposal that the head of the section of the Centre for Human Rights responsible for organizing the Seminar should be invited to hear the Committee's opinion.

57. Mr. SHERIFIS, referring to the problems that arose in connection with the circulation of information, said that, on 13 March 1996, he had requested

the secretariat to inform him "whether consideration was being given to the conduct of a study or the organization of a seminar" on the question of the right of refugees and displaced persons to recover their property "within the framework of the Programme of Action for the Third Decade" (CERD/C/SR.1152). Unfortunately, his question had gone unanswered. As the participants in the Seminar were to deal with issues that related directly to the work of the Committee, its organizers should have informed the Committee's members, if only to enable them to make a contribution. He agreed with Mr. Wolfrum that the head of the section organizing the Seminar should be invited to a meeting with the Committee to clarify the situation. He believed that not even the Committee's Chairman had been informed of the organization of the Seminar.

58. The CHAIRMAN, replying to the comment by Mr. Sherifis, said that, at th end of May or the beginning of June, he had received a letter from Mr. Pace, addressed to him as Chairman of the Committee, inviting him to take part in the meeting and to present a paper. He had assumed that the invitation was addressed to him in a personal capacity and had informed the Seminar's organizers that his schedule was too heavy and that it would be extremely difficult for him to take part. He had also asked them for details on the participants and the objectives of the meeting. The reply he had received a few weeks later had not seemed very important and he had not considered it necessary to bring the letter with him. He had also had a telephone conversation, but at no time had he been asked to have himself represented by someone else as Chairman.

59. Mr. ABOUL-NASR said that the Chairman of the Committee had been consulted, even if it was not clear in what way. It would be desirable for the Committee to have further information on the matter so that it might consider it on an informed basis.

60. The CHAIRMAN said that it would be necessary to find out whether Mr. Pace could provide a copy of the letters exchanged.

61. Mr. DIACONU pointed out that everyone knew that the Seminar had been o the agenda of the Third Decade for two years. What was surprising was that should have been organized without the Committee being properly consulted an requested to submit a report on its activities. Since the Committee had bee faced with a fait accompli, the participants should be provided with all the information they needed to adopt informed conclusions. In particular, the secretariat should provide the Seminar's organizers with all of the Committee's reports since its establishment, the report of the current sessi and the recommendations and resolutions it had adopted over the years. It w also important for the Committee's Chairman to take part in the work of the Seminar and to chair some of its meetings so that its conclusions would not adversely affect the Committee's future activities.

62. Mr. WOLFRUM, introducing the agenda for the Seminar in greater detail (document without symbol, distributed in the meeting room in English only), said that items 1, 2 and 4 entitled "Global assessment of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; Implementation of articles 4 and 6: limits and perspectives and Effects of reservations to article 4 of the fight against racism and racial discrimination" gave rise to the most problems. Since the Seminar

would adopt a report, the Committee might well receive guidelines on the orientation of its work for its next session that would have been adopted without it being consulted.

63. Mr. de GOUTTES said that Mr. Wolfrum's suggestion that a meeting should be organized with Mr. Pace was the best solution. However, the questions raised about the Seminar showed that there was a broader problem of the circulation of information within the Committee. Several of its members had already taken part in training seminars organized by the Centre for Human Rights without their colleagues' knowledge. The Centre should be asked systematically to inform all the members of the Committee when it organized such seminars.

64. Mr. van BOVEN said that the Committee should not overstate the importance of the Seminar. Mr. de Gouttes' comment was nevertheless relevant; the flow of information had to be improved. The way in which the Seminar had been organized was another example of the lack of communication within the Centre for Human Rights between the section organizing the Seminar and the section responsible for the Committee. If it organized a meeting with Mr. Pace, the Committee would simply be formalizing the Centre's compartmentalization. It would be better if it went directly to the Centre's highest authority, the High Commissioner for Human Rights.

65. Mr. CHIGOVERA said that there were some indications that Mr. Rechetov and Mr. Valencia Rodriguez had been invited to participate in the Seminar as members of the Committee. If so, the Committee should be consulted.

66. Mr. AHMADU noted that some members of the Committee were informed of the organization of seminars and invited to them, while others were not. That was a kind of discrimination.

67. The way in which the Seminar in question had been organized reflected a trend that should be stopped. It was inconceivable that the Committee's work should be assessed unless its Chairman was invited to participate. Before taking a decision on whether to invite Mr. Ayala Lasso or Mr. Pace, the members of the Committee had to adopt a common position on the matter to ensure that there was no disagreement during the meeting.

68. Mr. YUTZIS said that the problem to which the Seminar gave rise was a further illustration of shortcomings in the operation of the Centre which took the form of poor resource utilization and overlapping of activities. Fears about the results of the Seminar might, however, be exaggerated. What mattered was that the Committee should make itself heard so that it was not once again presented with a fait accompli.

69. Mr. GARVALOV said the of the Seminar related directly to the Committee's work

have been involved in the process from the outset. As far as the participation of Mr. Rechetov and Mr. Valencia Rodriguez was concerned, there was every reason to believe that they had been invited in their personal capacity. If not, they would certainly have informed the Committee.

The meeting rose at 6.05 p.m.

UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1172
21 August 1996

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1172nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 August 1996, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Thirteenth periodic report of Venezuela (continued)

* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1172/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17874 (E)

The public part of the meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Thirteenth periodic report of Venezuela (CERD/C/236/Add.8/Rev.1) (continued)

1. At the invitation of the Chairman, the delegation of Venezuela took places at the Committee table.

2. Mr. SUAREZ FIGUEROA (Venezuela), replying to questions raised, said that the additional information on migrant workers from the Andean countries requested by Mr. Valencia Rodriguez would be included in Venezuela's fourteenth periodic report.

3. He asked for clarification as to the exact type of additional information on bilingual education and on agrarian reform, the Committee wanted.

4. The fourteenth periodic report would include more information on the conflicts in Zulia involving indigenous groups as well as on the alleged extrajudiciary executions of 1994, which had been reported by Amnesty International and the United States Department of State. In that connection, he queried the appropriateness of quoting from the United States report in the Committee. The Venezuelan Government was of the view that no single source of information on human rights could be considered as gospel. It had consequently decided, at the beginning of 1996, to issue its own report in response to the 1995 State Department report, and to state its strong objections to negative or partial versions of events being presented as fact, without any mention of the Venezuelan Government's efforts in the area of human rights.

5. With regard to the deaths of a number of Yanomami Indians in 1993, the Government's position was that it could not accept responsibility for offences not committed by its citizens. From the end of 1989, thousands of Brazilian miners had entered the country illegally, equipped with chain-saws and drills in search of alluvial gold in a wild area where the border was undefined and where there had been no military or police presence. In addition to destroying much of the forest, they had used mercury in extracting gold, polluting rivers and killing thousands of fish. It was not surprising that they had come into conflict with the Indians, particularly the Yanomami who lived in that region. As reported to the Centre for Human Rights at the time, the Venezuelan Government had set up an immediate inquiry by a joint committee which had proved that the Brazilian miners were to blame. The matter had then been referred to the Brazilian courts and the Brazilian Government had undertaken to keep the Venezuelan Government informed of the outcome. The issue had been discussed in bilateral meetings between Venezuela and Brazil in recent years. The military presence in the area had since been increased and there had been no further conflict. The Ministry of Education was also implementing a number of programmes to protect the Yanomami Indians.

6. Mr. Garvalov had been right in observing that racial discrimination did not appear to be a widespread phenomenon or a State practice. His concern

regarding the absence of black actresses in a television series and the portrayal of Gypsies was unfounded. Black actresses appeared frequently in other series, and there no Gypsies in Venezuela.

7. In the quest for freedom and equality following the independence process of 1910-1924, the colonial baptismal registers which had required information on skin colour and social status had been destroyed. Since then no census had included a section on race, except those carried out to determine the size and situation of the indigenous populations. An attempt had been made by a conservative Government in the middle of the nineteenth century to carry out a census to establish racial origin, but had been abandoned because of the outcry which had ensued.

8. The special provisions of article 77 of the Constitution were intended to promote the rights of the indigenous population, particularly in respect of land allocation. Under article 65 of the Constitution, all citizens, including indigenous populations, enjoyed freedom of religion and culture. Those rights were also fully guaranteed in a number of other laws, decrees, and rules.

9. With regard to the question raised by Mr. de Gouttes on the revision of the Penal Code to incorporate racial discrimination as an offence, it was impossible to predict when such a reform would take place in view of the length of time required to amend civil and penal codes.

10. The Indigenous Communities, Peoples and Cultures Act would, when passed, give indigenous groups their own legislative body. The question as to whether the indigenous populations had been able to participate in the revision of article 77 (2) of the Constitution could not be answered for the time being. However, in the drafting of legislation, Venezuela's political system gave people directly affected the opportunity to be heard, with the result that significant changes in draft legislation were not unknown.

11. The Venezuelan Government had, despite its budgetary constraints, given priority to the improvement of prisons. Problems remained however, particularly from the point of view of overcrowding.

12. With regard to Mr. Ahmadu's question concerning sport, he said football was a young sport and not widely played in Venezuela. Baseball and basketball, on the other hand, were popular, as were boxing and athletics. The Houston Rockets had engaged a Venezuelan as an alternate player and an African-Venezuelan was President of the National Sports Council.

13. There was a fairly large number of African-Venezuelans in the upper echelons of the police and military services, and, in the diplomatic corps, several had reached ambassadorial level.

14. With regard to the assimilation of the indigenous populations, which had been referred to by Mrs. Zou, he said efforts were made to assimilate them gradually into the general population, while at the same time preserving their identity, and programmes had been established to ensure their political, social and economic advancement. Indigenous and non-indigenous offenders were usually held in separate prisons largely because they tended to live in

different areas, the indigenous population being more numerous in the State of Zulia. Information on prison uprisings and deaths would be given in a subsequent report.

15. Venezuela had no special courts for its indigenous populations, but provided interpreters where necessary. However, in a recent case in the Supreme Court, indigenous customary law had been upheld.

16. Regarding political participation by indigenous peoples, he said that there had been a keen interest in politics among all Venezuelans since the establishment of democracy in 1958, after the long period of denial of political expression. One of the candidates for the 1993 presidential election had been Black; he might well stand again for the 1998 election, and stood a good chance of winning. An Indian had been among the three main candidates for that same election. There were a number of Indians in the Chamber of Deputies, including one who had been parliamentary secretary of the Latin American Indigenous Parliament. The legislative assemblies of States with large indigenous populations, such as Zulia, Amazonas and Delta Amacuro, had a very high proportion of indigenous deputies.

17. It was the National Agrarian Institute that was responsible for implementing the Agrarian Reform Act, covering land distribution, expropriation and such matters. The Institute was headed by an Indian. Efforts were being made to combat expropriation of Indian lands not only by mining companies but also by large landowners and the tourist and oil industries.

18. The illiteracy rate among the indigenous population was 40.5 per cent. Regarding the number of schools, 51 per cent of the indigenous population lived in areas that were not specifically indigenous, and only 49 per cent lived in settled communities, 34.4 per cent of which had schools, usually one-teacher primary schools catering for about 40 children. In the border areas there were also schools with different teachers for the various grades. He did not know the exact number of university graduates, but he had been informed of a significant number of Indians now attending universities. They would be included in the 44.4 per cent of the indigenous population that had received an education.

19. Although the Government could not claim full success in guaranteeing the right to education for indigenous peoples, it had assumed its responsibilities and invested much time and effort in providing education and combating illiteracy among the indigenous population.

20. Owing to the current critical economic situation, inadequate access to health care was a problem shared by many Venezuelans, but was obviously particularly acute for indigenous communities in remote areas. The Committee's comments would be reported to the Government and he hoped that better news could be reported in the future.

21. He acknowledged that access to the courts was not easy, but it was feasible, and claims had been brought to court by indigenous people in recent

years, for instance over human rights and land issues. Nearly all indigenous groups had their own national or regional organizations, which helped them to defend their rights.

22. In reply to the comment that the Ministry of Education was reported to have shown no interest in implementing Decree No. 283, he conveyed the information provided by the Office of Indigenous Affairs of the Ministry of Education to the effect that the intercultural bilingual education programme established under Decree No. 283 was now being implemented in 8 States, in 259 of the 548 indigenous schools. Eighteen teachers belonging to 3 different ethnic groups were responsible for the programme, and 32 teachers had recently been trained to conduct it. The Caracas Teacher Training Institute would soon be offering a post-graduate course in indigenous culture for members of indigenous communities. It should be borne in mind that it was difficult to provide community schools for certain indigenous groups that traditionally had no fixed settlement pattern. Every effort was made to include traditional indigenous teaching practices, in addition to formal methods, in the intercultural bilingual education programme. The programme had encountered difficulties, however, because of inadequate technical backstopping and financing problems due to the budget constraints affecting all government programmes.

23. Mr. Chigovera had asked why only 17 per cent of indigenous communities owned their lands and what steps were being taken to implement agrarian reform. As an initial answer pending more detailed replies, he said that the inherited system of land distribution was highly complicated, some of it going back to the eighteenth century. It was true that the new, highly liberal republican legislation adopted since independence had not always been favourable to the indigenous population. With the passing of the Agrarian Reform Act in 1960, the National Agrarian Institute had to exercise great care to ensure that land granted to peasants did not revert to unauthorized beneficiaries. The Government and the judiciary were fully aware of their obligations regarding the complex issue of indigenous communities' land rights.

24. He was pleased to inform the Committee that Venezuela's ratification of ILO Convention No. 169 could be expected in the near future. He would inform the authorities about the question concerning the declaration under article 14 of the Convention. By and large, he agreed with Mr. Aboul-Nasr's comment on article 14. He was unable to convey his Government's position concerning the amendments to article 8 of the Convention.

25. Some concerns had been expressed about the adverse effects of fundamentalist religious missions working with indigenous communities. In Venezuela, it was the Ministry of Education that was competent to oversee the activities of such missions. The Government was fully aware of the problems involved, but the recurrent problem of budget constraints meant that it had not always been able to monitor the situation as closely as it would have wished.

26. The CHAIRMAN expressed great interest, in particular, in the Latin American Indigenous Parliament to which the representative had referred.

27. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) said he hoped that the constructive dialogue with Venezuela would continue in the future. Summing up the discussion, he noted that the majority of the population was the result of a genuine mixing of races, although there was also a recognized indigenous community. Although there was no de jure racial discrimination, the existence of de facto discrimination was a situation that needed addressing. The twofold approach of assimilation and preservation of cultural identities in respect of the indigenous populations and African Venezuelans needed further clarification. The Committee's views differed from those of the Venezuelan authorities in regard to the State party's obligations under articles 4 and 6, the assumption that there was no racial discrimination in Venezuela being insufficient. It welcomed the proposal, currently before Congress, to make racial discrimination an offence, and the Government's policy of opposition to any kind of discrimination and the importance attached to the draft law on Indigenous Communities, Peoples and Cultures, which he hoped would soon be adopted. He also looked forward to the ratification of ILO Convention No. 169. He asked whether another census of the indigenous population was planned; the data it yielded would help in ascertaining which groups might need special protection and measures. He was interested to hear about the indigenous teachers who had recently qualified to conduct the intercultural bilingual education programme.

28. Regarding the implementation of article 4 of the Convention, it was clear that constitutional provisions were not sufficient to ensure that all the rights of indigenous peoples and African Venezuelans were effectively guaranteed.

29. The information provided on the right to education was welcome. Further steps were needed to bring down the rate of illiteracy among indigenous peoples. Further information would be appreciated in the next report on the intercultural bilingual education programme and on agrarian reform issues such as the land distribution and land grant system as they related to the indigenous populations.

30. He had referred to information provided in the United States Department of State report merely as a starting point for discussion. He expressed the hope that Venezuela's periodic report, the discussion with the Committee and the latter's concluding observations would be widely circulated in Venezuela, especially among the indigenous people, so as to increase their awareness of their rights and the remedies available to them.

31. The CHAIRMAN informed the Venezuelan delegation that the question of NGO sources of information was the subject of ongoing debate in the Committee. There were also various opinions on the subject of ethnic classification. However, the Committee's concluding observations, which would be forwarded to the Venezuelan authorities as soon as possible, represented the views of the Committee as a whole.

The public part of the meeting rose at 11.35 a.m.

UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1173
5 November 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1173rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 August 1996, at 3 p.m.

Chairman: Mr. BANTON

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Eighth to twelfth periodic reports of Mauritius

Third to tenth periodic reports of Zaire (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17866 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PA
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eighth, ninth, tenth, eleventh and twelfth periodic reports of Mauritius (CERD/C/280/Add.2; HRI/CORE/1/Add.60)

1. At the invitation of the Chairman, the delegation of Mauritius took places at the Committee table.

2. Mr. BAICHOO (Mauritius) said that his country was pleased to renew dialogue with the Committee. A multilingual, multi-ethnic and multiracia country, Mauritius was traditionally committed to the observance of human rights and the principle of unity in diversity. His delegation was ready answer any questions that the members of the Committee might wish to ask concerning the report.

3. Mr. SEETULSINGH (Mauritius) said that his country had ratified most the international human rights instruments. It had reported in 1995 to t Committee against Torture, the Committee on the Elimination of Discrimina against Women and the Committee on Economic, Social and Cultural Rights, in March 1996 to the Human Rights Committee; in October it would be summi a report to the Committee on the Rights of the Child. Also in October 19 Mauritius would host the meeting of the Committee established under the African Charter on Human and Peoples' Rights, where it would present a re

4. Mauritius was a working democracy and had a parliamentary form of government. A new Government had been elected in December 1995. The mem of the two parties in power might be of different descent (Indian, Muslim African, European, Chinese or mixed), but they were united in their commi to progress and the rule of law. The press was very vigilant concerning respect for human rights and democracy, and drew attention to situations which citizens' rights were being infringed. Non-governmental organizati were also very active and Amnesty International, for example, had recent received funds from a Scandinavian organization to launch a teaching pro in Mauritius. The Ministry of Education was furthermore cooperating wit UNICEF to promote the ideals of peace, tolerance and interdependence wit the school environment. The new Government had undertaken to establish Equal Opportunities Commission and no discrimination was allowed in recruitment for work in the public sector. Lastly, a small human rights was being set up within the Ministry of Justice to improve reporting procedures.

5. Mr. GARVALOV (Country Rapporteur) welcomed the fact that the dialo between Mauritius and the Committee had been renewed and that a delegati the State party was present. In preparing his own report, he had referr the periodic report under consideration (CERD/C/280/Add.2) and to the co document (HRI/CORE/1/Add.60), as well as to the relevant proceedings of Human Rights Committee, the Committee on Economic, Social and Cultural R and the Committee on the Rights of the Child.

6. It would be recalled that the Committee had considered the implementation of the Convention in Mauritius in March 1994 without a re

and in the absence of a delegation from the State party. In its concluding observations, the Committee had accordingly drawn the Government's attention to the possibility of requesting technical assistance from the Centre for Human Rights. It had also noted that there appeared to be no grounds for serious concern about racial discrimination, but had expressed the wish to receive more precise information concerning the ethnic composition of the population, the measures taken to give effect to article 4 of the Convention and the legal remedies available to persons who felt that they were being subjected to racial discrimination. Lastly, it had requested further information on how the educational system promoted tolerance.

7. The report under consideration was a great improvement on the previous one. It conformed to the Committee's guidelines, contained valuable information and provided answers to certain questions. Praiseworthy recent developments included the Public Gathering Act 1991 (para. 33), which together with section 282 of the Criminal Code punished incitement to racial hatred, and the Mauritius Citizenship (Amendment) Act 1995 (para. 50), which facilitated naturalization and recognized dual nationality in accordance with the requirements of the Convention.

8. In general, the information supplied on the ethnic composition of the population was interesting and there was no reason for concern about the fact that, in order to promote a Mauritian identity, the public authorities preferred not to indicate a breakdown of the population by community in censuses (as long, of course, as that policy was not aimed at forced assimilation). However, the question arose as to why persons of Creole and European origin made up the so-called "general population" and why "Muslims" were listed among the ethnic groups. Regarding the composition of the National Assembly, paragraph 6 of the report said that 8 of the 70 members were selected from among the best losers at the elections. How did the system actually ensure a fair representation of the various ethnic components of the population? The delegation might, furthermore, wish to confirm that the Convention could be invoked directly before the Mauritian courts, as it would appear from paragraph 12 of the report, since that would be very positive indeed.

9. Concerning the information provided on article 2 of the Convention, section 16 of the Constitution prohibited the passing of any law that was discriminatory "subject to certain exceptions" (para. 16 of the report). What were those exceptions? Paragraphs 17 to 19 of the report provided some interesting information on the constitutional provisions guaranteeing civil and political rights, although that information would seem to be more directly relevant to the work of the Human Rights Committee. Also with regard to article 2, it was stated in paragraph 20 of the report that a denomination or association could be prevented from establishing schools at its own expense under certain circumstances. What were those circumstances? Paragraph 23 referred to the provisions of the Criminal Code concerning acts of incitement to racial hatred. Why were such acts not prohibited or at least declared to be offences punishable by law? Lastly, paragraph 31 stated that no case of racial discrimination had been reported since the submission of the last

report. Did the fact that no complaints had been filed in the courts
that there had been no racial abuses, or was it that people were reluc
go to court for various reasons?

10. As far as the implementation of article 3 of the Convention was
concerned, it would be recalled that Mauritius had established relatio
South Africa since the abolition of apartheid in that country. The
information provided in relation to article 4, concerning the Public G
Act 1991 and section 282 of the Criminal Code, was a little brief and
Mauritius did not seem to have entirely fulfilled the requirements in
article 4 (b) by declaring illegal and prohibiting all activities whic
incited racial hatred. It also seemed that in some areas of private l
covered by section 16 of the Constitution, such as adoption, marriage
divorce, the legislation should be supplemented to eliminate any possi
of discrimination.

11. Regarding the implementation of article 5 of the Convention, the
information contained in the report did not enable the Committee to de
whether some of the limitations on the freedom of the press provided f
the Constitution were based on the need to prevent the expression of r
prejudice. Paragraph 31 mentioned the banning of a book on the ground
it could incite racial conflicts, and during its consideration of the
periodic report of Mauritius, the Human Rights Committee had noted wit
concern that two literary works had recently been banned without legal
measures and that there were extra-legal restrictions on freedom of
expression. Judging from the report, the provisions governing nationa
marriage, property, freedom of religion, housing, the right to health
social security, to education and to participate in cultural activitie
conformed to the requirements of the Convention. Concerning the right
equal treatment before the tribunals, it was said in the report that t
doctrine of separation of powers guaranteed the independence of the ju
(para. 39) and there was no reason to doubt that statement. He wished
point out, however, that at times the independence of the judiciary wa
enshrined in the Constitution but in practice the appointment of judge
influenced by political considerations. Regarding political rights, h
like to know whether the formation of political parties or organizatio
ethnic or religious basis was authorized. He noted, furthermore, that
unemployment no longer seemed to be a problem in the State party, whic
contrary had a shortage of labour. Concerning the right to take part
cultural activities, mention was made in paragraph 89 of Chinese, Isla
African cultural centres; but were there no cultural centres for perso
Creole or European origin?

12. The report contained useful information on the implementation of
article 6 and enumerated the forms of redress available to any persons
rights had been infringed by an act of racial discrimination. Regrett
however, there was no information on specific cases. Regarding the
information on the implementation of article 7, he was pleased to note
the Master Plan on Education for the Year 2000 (para. 98) provided in
particular for education in human values and education for a better li
Concerning the use of languages, the information given in paragraphs 9
and 101, indicating that 10 languages were used (English, French, Hind
Bhojpuri, Tamil, Telegu, Marathi, Mandarin, Urdu and Creole), gave ris
several questions. At a recent meeting of the Committee on Economic,

and Cultural Rights, it had been said that the use of the two main languages spoken by 92 per cent of the population (Creole and Bhojpuri) was still banned in the National Assembly and actively discouraged in all Government institutions. For its part, one non-governmental organization concerned with the rights of the child, the Federation of Pre-School Playgroups, had stated in January 1996 that there was still ethnic discrimination in Mauritius and that the right of the majority to use Creole and Bhojpuri did not appear to be respected either in education or in the media. It would therefore be desirable for the State party to provide some clarification in that regard.

13. In conclusion, he wished to commend Mauritius on the quality of the report it had submitted.

14. Mr. de GOUTTES welcomed the resumption of the dialogue with Mauritius after so many years. The documents before the Committee provided a large amount of information on the instruments guaranteeing the rights of Mauritians. However, those instruments were generally more relevant to the work of the Human Rights Committee and there was also a lack of specific details on their implementation. The information requested in 1987, and again in 1994, on the ethnic composition of the population had not been supplied. The explanation given in paragraph 4 of the report obviously reflected a fine intention to promote a Mauritian identity regardless of the ethnic background of the inhabitants of the island, but the Committee did not have a sound basis on which to work without those statistics.

15. The report also failed to provide information on socio-economic indicators, such as unemployment, mortality, suicide, prostitution, etc., which the Committee needed to understand the position of the various ethnic groups in society.

16. Considering the number of instruments guaranteeing non-discrimination and the remedies available to any complainant, he was surprised that no case of racial discrimination had been brought before the courts in nine years, as indicated in paragraph 31 of the report. He wondered whether that was due to the absence of complaints, to the fact that the complaints had not been pursued, to the lack of public information about citizens' rights, to lack of confidence among the public in the police service and the administration of justice, or to the use of other means to resolve racial conflicts.

17. The Convention could be invoked before the courts - and judicial decisions often underlined the importance of treaties - but, according to paragraph 12 of the core document (HRI/CORE/1/Add.60), the terms of the International Covenant on Civil and Political Rights "as such are not directly enforceable by our courts". He wondered whether the Mauritian system was monist or dualist and whether the Convention took precedence over Mauritian domestic law.

18. Lastly, he would like the delegation of Mauritius to indicate whether arrangements were being made to disseminate the country's twelfth report and the Committee's concluding observations on it.

19. Mr. SHERIFIS said that he wished to commend Mauritius most particularly on having given concrete and encouraging information and for having sent a high-level delegation.

20. In paragraph 6 of the report, he noted an especially interesting feature of the country's political practice, namely the selection of eight members of the National Assembly "from among the best losers at the elections". He would appreciate having details on the method of selection of those representatives and on their mandate.

21. Regarding the implementation of article 5 of the Convention, further information would be welcome on how Mauritius ensured that all communities took part in the country's political life, how far the various communities had access to radio and television programmes in their languages and whether there were private stations, what restrictions were placed on the right to freedom of movement, and the reason for the surprising clause making the choice of a spouse conditional on respect for the rights and freedoms of others, public order and public morals.

22. Lastly, he would like to put to the Mauritian delegation three questions that he asked of practically all delegations. Was the Government ready to agree to the amendment of the Committee's financing? Was it planning to make the declaration provided for in article 14 of the Convention? Was it endeavouring to give publicity to the Convention and to publish the records of the Committee's discussions, or at least its concluding observations?

23. Mr. VALENCIA RODRIGUEZ said that he, too, was somewhat intrigued by the appointment of eight members of the National Assembly from among the election losers. He would like to know which ethnic groups generally lost the elections, which were the winners and how that system guaranteed the fair representation of all ethnic groups.

24. He welcomed all the measures taken to implement article 2 of the Convention, but regarding the information provided in the report in paragraphs 13, 16 and 23, respectively, he would like to know in what cases the Constitution had been given a generous construction, what were the exceptions to prohibiting the passage of a law that was discriminatory and how far those exceptions affected the various ethnic groups, and whether section 282 of the Criminal Code had been invoked in cases of discrimination against a particular group. He would also like to know why the Government, which affirmed that there had been no cases of racial discrimination, had nevertheless prohibited the distribution of a book that it had considered too dangerous for racial peace.

25. Judging from the information on the implementation of article 4 of the Convention, the few provisions adopted in that regard were insufficient considering the vast scope of the article.

26. The restrictions placed on freedom of movement in the country and the amendment of the Mauritius Citizenship Act to overcome the difficulties encountered by women non-citizens married to Mauritian citizens and persons holding dual nationality were relevant to the implementation of article 5 and therefore required clarification.

27. There was every reason to be pleased with the way in which Mauritius was giving effect to articles 6 and 7 of the Convention and he could only encourage it to continue along that path.

28. Mr. CHIGOVERA noted with satisfaction the influence of the Convention on judicial decisions. That influence should, however, be reinforced by promulgating the requisite legislation for the Convention to be incorporated into the country's domestic law.

29. There was no mention in the information concerning the implementation of article 4, or anywhere else in the report, of measures taken to outlaw racist organizations and to prohibit any encouragement of racism by a public body. States parties were required to give effect to article 4 as a whole, yet section 282 of the Criminal Code concerned only subparagraph (a) of that article.

30. While good progress was being made to give effect to article 5, in the case of article 6, on the other hand, the Committee might wonder how the most disadvantaged could seek redress in the ways enumerated in paragraph 93 of the report. Further information on any assistance given to them and on the possible role of the Ombudsman regarding protection against racial discrimination would be welcome.

31. Mr. AROUL-NASR said that while some points still needed clarification and some provisions were as yet being given effect only partially, Mauritius deserved more praise than criticism. It was indeed gratifying to note the country's economic growth and the fact that Mauritians in their daily lives could enjoy the rights enumerated in article 5 of the Convention, as witnessed by the concrete examples given in the report.

32. It was not a bad thing for the experts to have diverging views on particular aspects of the life of a country as that enriched their discussion. However, they were bound to agree that every Government had the right, especially when resources were limited - and holding a census, for example, was extremely costly - to act in accordance with its own priorities, which often differed from those set elsewhere. The Government of Mauritius had not completed its task, of course, but the Committee must recognize that it had already obtained some very good results.

33. The Mauritian delegation withdrew.

Third to ninth periodic reports of Zaire (CERD/C/237/Add.2); tenth periodic report of Zaire (CERD/C/278/Add.1)

34. At the invitation of the Chairman, Mr. Marume Mulume (Zaire) took a place at the Committee table.

35. Mr. MARUME MULUME (Zaire), replying to the questions and comments of members of the Committee, said that the Transitional Constitutional Act promulgated in 1994 had replaced the 1967 Constitution which, together with the amendments made to it in the course of nearly 30 years, had previously governed Zaire. The transition period had originally been due to end on

30 July 1995 but, because of the practical difficulties encountered in organizing elections, the High Council of the Republic had extended it until 9 July 1997. A new Constitution was due to be adopted by referendum before the end of the first quarter of 1997; thereafter, general elections to the Parliament and for the office of President of the Republic were to be held in May 1997 at the latest. The Zairian authorities attached great importance to keeping to that date, since the transition period was prejudicial to everyone.

36. Zaire had been engaged in a democratic process for about six years. Its previous Constitution had established a presidential regime which, together with a one-party system, had led to State authority being concentrated mainly in the hands of the President of the Republic. The Constitutional Act had instituted a sharing arrangement between the President of the Republic, the Government and the High Council of the Republic - Transitional Parliament. However, that change had been made without elections and rules had therefore had to be defined to manage the transition. Considering the large number of parties - 450, for a population of around 45 million - which had succeeded the one-party system, and in the absence of the legitimacy that derived from elections, Zaire had by consensus and following negotiations in the African tradition arrived at the Constitutional Act, which defined the fields of competence. Article 11 of that Act (CERD/C/278/Add.1, para. 5) in no way conflicted with article 78, under which the Prime Minister had to be chosen from a political family other than that of the President of the Republic. The two provisions were complementary: a grouping of the 450 existing political parties into two "platforms" or "political families" had been necessary, pending the elections, to permit a sort of "cohabitation" between different political tendencies such as could also be found in a country like France.

37. It had to be appreciated that the passage from a one-party system to a pluralist system released long-contained energies and passions and led to disruptions of all kinds. In Zaire, those phenomena had been aggravated by the economic, social and financial crisis already affecting the country for some 15 years. In such circumstances, care was needed when instituting trade union freedom, the right to strike, the right to demonstrate, etc., to make sure that what remained of the national infrastructure was not destroyed. Unfortunately, the first two years of the process of democratization had been marked by slippage and by the pillaging of the national economy in 1991 and 1993. That situation caused insecurity for people and property and many breaches of human rights and fundamental freedoms. The two reports of the Special Rapporteur on the situation of human rights in Zaire (E/CN.4/1995/67 and E/CN.4/1996/66) cited at the 1171st meeting did not adequately reflect that de facto situation. Theory was one thing, but experience and day-to-day life were another.

38. With regard to nationality, Zairian law was quite liberal, as had been noted by members of the Committee. However, Zairian nationality was "one and exclusive", and holding more than one nationality was not possible. Anyone acquiring Zairian nationality, by one of the means provided for by law, had to give up his previous nationality. The ethnic conflicts connected with nationality that had arisen in eastern Zaire, involving the Banyarwanda in North Kivu and the Banyamulenge in South Kivu, concerned the application of the nationality law. In 1972, and then again in 1978, Zaire had made large efforts to regularize the status of and had granted Zairian nationality to

thousands of Rwandans living in its territory. However, the beneficiaries of those measures had not always behaved as worthy sons of their new fatherland. Three months after the Rwandan Patriotic Front (FPR) had taken power in Kigali, many had gone back to Rwanda, because that had been in their interest. The Zairian political authorities were accused of stirring up ethnic hatred. Yet Zaire was hosting the largest number of refugees in Africa (from Angola, the Sudan, Uganda, Rwanda and Burundi). Many had become integrated, without requesting Zairian nationality, and were doing very well.

39. In the Great Lakes region, the ethnic conflict between refugees and the local population was compounded by a still unresolved problem of allotment of land. There were currently about 1,200,000 Rwandan refugees and between 300,000 and 400,000 Burundian refugees in the Republic of Zaire, i.e. some 1,600,000 to 1,700,000 refugees (according to the latest figures from the Office of the United Nations High Commissioner for Refugees). The Kivu region had 6 million inhabitants, but the towns close to Rwanda and Burundi - Goma, 200,000 inhabitants; Bukavu, 350,000 inhabitants - were alone now hosting 1,200,000 persons. However, their ageing infrastructure could not cope. The influx of refugees was causing frustration, aggravated by pre-existing tensions. The refugees - old and new - were banding together, very often to the detriment of the local populations. In view of such tensions, Zaire had decided to proceed with the forced repatriation of refugees. It had then somewhat reconsidered its decision, hoping that voluntary repatriation would be organized by the international community. Unfortunately, two years later, the Rwandan refugees were still in Zairian territory. That situation, which was difficult for Zaire to manage, was also putting strain on the Kigali regime; the Rwandan authorities were convinced that their misfortune came from Zaire. Yet Zaire had not had anything to do with the dramatic situation that had occurred in Rwanda. It had merely hosted what refugees there had been in the country. That situation needed to be analysed in an unbiased manner. However, in his latest report, submitted two weeks earlier, the Special Rapporteur on the situation of human rights in Zaire affirmed that the Zairian authorities were stirring up ethnic hatred and conflict. It was deplorable that more weight should be attached to the statements by a special rapporteur who had spent a fortnight in a country of 2.5 million km than to the information and clarifications submitted by the Zairian delegation to the Commission on Human Rights.

40. Questions had been asked concerning the right to a fair trial and the impunity of perpetrators of human rights violations. Such impunity did not stem from any political will, but from the weakness of authority, from the shortage of material and human resources and from the general crisis. Despite those difficulties, in 1994 approximately 150 military personnel had been tried for offences they had committed. Instructions from the Ministry of Justice furthermore recalled the rules to be observed in regard to custody, arrest and pre-trial detention and stated that any breach of those rules made the perpetrator liable to sanctions. In its future reports to the Committee, Zaire would provide statistical information in that regard. Another question concerned political rights and representation in the National

Electoral Commission. Each "group of political parties" had to nominate 4 representatives by region (there were 11 regions in Zaire) to the Commission pending the elections. Lastly, the law on political parties did not authorize parties based on religious ideology.

41. There had also been questions on the economic situation. The crisis experienced by the country was inevitably having some disastrous consequences in the social field, and particularly among young people. Zaire had an enormous economic potential, but the fact was that the wealth it possessed had unfortunately not made it possible to improve the situation in areas such as education and health. The important thing now was to correct the mistakes of the past and to place the human being once again at the centre of the political system.

42. When acceding to a number of international instruments, Zaire had committed itself to raising public awareness of human rights standards and ensuring wide dissemination of the recommendations of the United Nations treaty bodies. For some time, the Government had been regularly reminding those in charge of key sectors of society, such as the media and education, of the need to ensure that the principles set forth in the international instruments were applied in everyday life. In that regard, he could provide members of the Committee with copies of guidelines sent by the Prime Minister to the Minister of Secondary and Higher Education and to the leaders of the press, urging them to give emphasis to those instruments in their respective fields.

43. While Zairian legislation generally conformed to international standards, its enforcement left much to be desired. Like the promotion of human rights, the struggle against discrimination was a long-term endeavour. Zaire therefore had to look to the future with the determination to implement what had not been implemented, and each day to do better than the day before.

44. In Zairian tradition, women had never been considered as inferior to men. Article 112 of the new Labour Code adopted in 1979 stipulated that "under equal conditions of labour, skills and performance, wages shall be equal for all workers, whatever their origin, sex or age". In matters of succession, the new Family Code specified the share of an inheritance passing to female members of the family.

45. In conclusion, up-to-date statistics on the general situation in the country, as requested by members of the Committee, would in future be included in the various reports and communications addressed to the Committee so that it could monitor developments closely.

46. Mr. CHIGOVERA said that the points to which he wished to draw attention did not require an immediate response and were being made solely with reference to future reporting by the State party. In a country as large as Zaire, it was obviously not easy to gather complete data on the 250 tribes living there. Nevertheless, he hoped that the next report would clarify a number of points for the Committee, especially as the State party had recognized that tribal differences could jeopardize the stability of the nation.

47. Under article 11 of the Constitution, as cited in paragraph 4 of the report, "All Zairians are equal before the law and are entitled to equal protection by the law". Paragraph 5 went on to say that, under article 34 of the Constitution, foreigners were entitled to the same protection of person and property as Zairians. The Constitution thus made a distinction between the two population groups and it was therefore important to know whether the protection accorded to foreigners extended to other rights, including political rights.

48. Various paragraphs of the report mentioned fines imposed for racially or ethnically motivated offences. Those fines had been set by law 30 years previously and it might be asked whether the amounts cited were still of any relevance given the large depreciation of the Zairian currency since then.

49. Mr. SHERIFIS, referring to the information that the President of the Republic and the Prime Minister must belong to two different political families, asked what exactly was meant by the term "political family" and whether that formula was designed to prevent any one party from gaining a monopoly of power.

50. Mr. de BOUTTER recalled the point he had made the previous day concerning the fact that the equilibrium of a whole region of Africa depended on the situation in Zaire. Considering the massive inflow of refugees, the economic and social crisis and the difficulties characterizing the transition period, the State party should be requested to keep the Committee regularly informed of developments.

51. Mr. DIACONU said that, in a statement made in April 1996 to the Commission on Human Rights, the Zairian Minister responsible for institutional reform had indirectly answered some of the concerns expressed by members of the Committee. He had, in particular, given details about the ethnic unrest. It would seem that the conflict with the Banyamulenge was due to the fact that the Rwandan population wanted to enjoy political rights without opting for Zairian citizenship, and that was difficult to accept. As the issue appeared not to be one of discrimination, the problem did not fall within the Committee's terms of reference. The Minister had also mentioned two other cases: the prohibition of a xenophobic sect by the Government and the dismissal of a governor who had been one of the instigators of an ethnic cleansing campaign. Regardless of the ethnic origin of the person concerned, that action seemed quite justified.

52. Mr. van BOVEN noted that the situation remained explosive, despite the measures taken, and it was therefore necessary to monitor developments closely. The Committee had reason to welcome the assurances given by the delegation concerning the regular submission of the State party's reports. In that connection, it should be recalled that the next report of Zaire was due on 21 May 1997.

53. Although the Committee had received a great deal of information about Zairian legislation, there were few details concerning the actual implementation of laws. Furthermore, some of the basic information on institutions and the composition of the population would not have been

requested if a core document had been available to the Committee. Since such a document could be used by all the United Nations treaty bodies, the State party was strongly encouraged to submit one. With regard to the setting up of a human rights office in Kinshasa, he would be grateful if the representative of Zaire would inform his authorities of the importance attached by the Committee to its establishment at the earliest date.

54. Lastly, he hoped that any outstanding questions would be answered in the State party's next report.

55. Mr. MARUME MULUME (Zaire), replying to Mr. Chigovera, said that everything would be done to provide detailed demographic statistics on tribes in the next report. Concerning the treatment of nationals and foreigners, the State party was, needless to say, perfectly entitled to grant political rights only to its nationals. On the other hand, it was bound to ensure equality between the two population groups in regard to the protection of persons and property.

56. As to the fines imposed on persons who committed offences on racial or ethnic grounds, he recognized that the sums quoted in the documents submitted to the Committee no longer corresponded at all to the real situation. The fines were, in fact, regularly adjusted by the Ministry of Finance and the judicial authorities, and care would be taken in future to supply up-to-date figures.

57. Replying to the questions asked by Mr. Sherifis, he confirmed that the country had 250 tribes and 450 parties. To mitigate that dispersion of political forces, the 450 parties all aspiring to exercise power had, on the basis of political platforms, formed two blocs called political families, constituted not along tribal lines but according to their respective affinities.

58. Answering a question put by Mr. de Gouttes, he said that the Zairian authorities would, as far as possible, keep the Committee regularly informed about developments in the country. In response to a comment made by Mr. Diaconu, he indicated that the instigators of the ethnic cleansing campaign in question had been brought to justice and he would arrange for the judgements rendered to be transmitted shortly to the Committee.

59. Regarding the establishment of a human rights office at Kinshasa, he had been informed that the High Commissioner for Human Rights was expecting a Zairian delegation to arrive in Geneva very soon for the signature of the headquarters agreement.

60. Mr. Marume Mulume (Zaire) withdrew.

The meeting rose at 6.10 p.m.